

## **FOREWORD TO GENERAL PROVISIONS**

This 1992 edition of the City of San Jose Standard Specifications for Public Works Construction, issued by the Department of Public Works, is a complete revision of and supersedes the publication of the same title dated 1975.

General Provisions, Sections 1 through 9 of these City Standard Specifications are complete as included herein. These provisions are patterned after the Caltrans Standard Specifications; however, they have been modified to make them consonant with City of San Jose requirements. In addition, the subsections within Sections 1 through 9 of the City Standard Specifications bear identical numbers and cover the same subject matter of the Caltrans Standard Specifications. Additional subsections have been added to the Caltrans Standard Specifications as necessary to complete these Standard Specifications.

## **SECTION 1**

### **DEFINITION AND TERMS**

<b>1-1.01</b>	<b>General</b>
<b>1-1.02</b>	<b>Abbreviations</b>
<b>1-1.03</b>	<b>Definitions and Terms</b>
<b>thru</b>	
<b>1-1.49</b>	

**CITY OF SAN JOSE  
STANDARD SPECIFICATIONS  
FOR  
PUBLIC WORKS CONSTRUCTION**

**SECTION 1 - DEFINITION AND TERMS**

**1-1.01 General.** - Unless the context otherwise requires, wherever in the specifications and other contract documents the following abbreviations and terms, or pronouns in place of them are used, the intent and meaning shall be interpreted as provided in this Section 1.

Working titles having a masculine gender such as "journeyman" are utilized in the specifications for the sake of brevity, and are intended to refer to persons of either sex.

**1-1.02 Abbreviations.**

AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
APHA	American Public Health Association
API	American Petroleum Institute
APWA	American Public Works Association
AREA	American Railway Engineering Association
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASHVE	American Society of Heating and Ventilating Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gage
AWPA	American Wood-Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
EEL	Electrical Engineers Institute
EIA	Electronic Industries Association
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineers Society
IMSA	International Municipal Signal Association
NEC	National Electrical Code
NEMA	National Electric Manufacturers Association
PUC	Public Utilities Commission
REA	Rural Electrification Administration
SS	State Specifications

## SECTION 1

## DEFINITION AND TERMS

UBC	Uniform Building Code
UL	Underwriters' Laboratories Inc.
CF	Cubic Foot
CSJ	City of San Jose
CY	Cubic Yard
EA	Each
GAL	Gallon
LB	Pound
LF	Linear Foot
LS	Lump Sum
MFBM	Thousand Foot Board Measure
MI	Mile
MSYD	Thousand Station Yard
SQFT	Square Foot
SQYD	Square Yard
STA	Station
TAB	Tablet

**1-1.03 Acceptance.** - The formal written acceptance by the Engineer of an entire contract which has been completed in all respects in accordance with the plans and specifications and any modifications thereof previously approved.

**1-1.032 Addendum.** - A written modification of the contract documents provided to holders of the contract documents prior to the opening of proposals issued by the Engineer.

**1-1.034 Admitted Surety, Insurer or Carrier.** - A surety or insurance carrier admitted to transact insurance in the State of California, as evidenced by the surety's or insurer's possession of a valid Certificate of Authority issued by the California Department of Insurance, as defined by the California Insurance Code.

**1-1.036 Award.** - The acceptance by the approval authority of a proposal.

**1-1.04 (Blank)**

**1-1.05 Base.** - A layer of specified material of planned thickness placed immediately below the pavement or surfacing.

**1-1.06 Basement Material.** - The material in excavation or embankments underlying the lowest layer of subbase, base, pavement, surfacing or other specified layer which is to be placed.

**1-1.07 Bidder.** - Any individual, firm, partnership, corporation, or combination thereof, submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

**1-1.075 Bidder's Bond.** - Form of proposal guaranty accompanying the proposal submitted by the bidder.

**1-1.08 Bridge.** - Any structure which carries a utility facility, or railroad, highway, street, or road, pedestrian, or other traffic, over a water course or over or under or around any obstruction.

**1-1.081 Calendar Day.** - A calendar day shall be any day including all legal holidays, Saturdays and Sundays.

**1-1.082 Caltrans.** - The Department of Transportation of the State of California organized to administer the affairs relating to State highways.

**1-1.083 Caltrans Specifications.** - The standard specifications of the State of California, Department of Transportation.

**1-1.084 City Clerk.** - City Clerk of the City of San Jose, and Ex-officio Clerk of the City Council.

**1-1.085 City Council.** - City Council of the City of San Jose.

**1-1.086 City of San Jose.** - A chartered municipal corporation of the State of California, as created by law; also referred to as the "City" or "Owner."

**1-1.087 City Manager.** - Chief Administrative Officer of the City.

**1-1.088 Conduit.** - A pipe or tube in which smaller pipes, tubes, or electrical conductors are inserted or are to be inserted.

**1-1.09 Contract.** - The written agreement covering the performance of the work and the furnishing of labor, materials, tools, and equipment in the construction of the work. The contract shall include the notice to contractors, proposal, plans, specifications, special provisions, written addenda and contract bonds; the required insurance and any Resolution of Intention of the City Council to order the work done or improvement made which is the subject of the plans and specifications; also any and all supplemental agreements amending or extending the work contemplated and which may be required to complete the work in a substantial and acceptable manner; also referred to as "Contract Documents." Supplemental agreements are written agreements covering alterations, amendments or extensions to the contract and include but are not limited to contract change orders.

**1-1.092 Contract Change Order.** - A written order to the Contractor, covering changes to the contract found by the City to be necessary for the proper completion or construction for the whole work contemplated by the contract, and establishing the basis of payment and/or time adjustments for the work affected by the changes, also sometimes referred to as a "Change Order."

**1-1.094 Contract Item (Pay Item).** - A specific unit of work for which a price is provided in the contract.

**1-1.096 Contract Time.** - The number of working or calendar days allowed for completion of the contract. If a calendar date of completion is shown in the proposal in lieu of a number of working or calendar days, the contract shall be completed by that date.

**1-1.10 Contractor.** - The person or persons, firm, partnership, corporation, or combination thereof private or municipal, who have entered into a contract with the City or the City's legal representatives.

**1-1.102 County Agencies.** - Whenever, in these specifications, reference is made to any County agency or officer, such reference shall be deemed made to any agency or officer succeeding in accordance with law to the powers, duties, jurisdiction and authority of the agency or officer mentioned.

**1-1.104 County Engineer.** - The County Engineer of the county in which the work is to be performed, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties properly delegated to them.

**1-1.11 Culvert.** - Any structure, other than a bridge, which provides an opening under a roadway for drainage or other purposes.

**1-1.115 Date of Acceptance.** - The date which the Notice of Completion and Acceptance is filed at the office of the County Clerk in the county in which the work is performed.

**1-1.12 Days.** - Unless expressly otherwise designated, days as used in the specifications will be understood to mean calendar days.

**1-1.13 Department of Public Works.** - The Department of Public Works of the City of San Jose as created by law, also referred to herein as the "Department."

**1-1.14 Detour.** - A temporary route for traffic around a closed portion of a road.

**1-1.15 Director of Public Works.** - The executive officer of the Department of Public Works, as created by law also referred to as the "Director"; also the ex-officio Superintendent of City Streets, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties properly delegated to them; also referred to herein as the "Engineer."

**1-1.16 Divided Highway.** - A highway with separated traveled ways for traffic, generally in opposite directions.

**1-1.17 (Blank)**

**1-1.18 Engineer.** - The City Engineer of the City of San Jose, being also the Director of the Department of Public Works of the City of San Jose, and ex-officio Superintendent of City Streets of San Jose, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties properly delegated to them.

**1-1.19 Engineer's Estimate.** - The list of estimated quantities of work to be performed as contained in the Proposal.

**1-1.20 Federal, State or Local Agencies.** - Whenever, in the specifications, reference is made to any Federal, State or Local agency or officer, including but not limited to the City, such reference shall be deemed made to any agency or officer succeeding in accordance with law to the powers, duties, jurisdiction, and authority of the agency or officer mentioned.

**1-1.21 Fixed Costs.** - Any necessary labor, material and equipment costs directly expended on the item or items under consideration which remain constant regardless of the quantity of the work done.

**1-1.22 Frontage Road.** - A local street or road auxiliary to and located generally on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

**1-1.225 Full Compensation.** - Total and complete payment including overhead and profit for furnishing all supervision, labor, materials, tools, equipment, and doing all work involved in providing the item complete and in place in accordance with the requirements of the contract.

**1-1.23 Grading Plane.** - The surface of the basement material upon which the lowest layer of subbase, base, pavement, surfacing, or other specified layer, is placed.

**1-1.24 Highway.** - The whole right of way or area which is reserved for and secured for use in constructing the roadway and its appurtenances also referred to herein as "street" or "road."

**1-1.242 Improvement District.** - The district to be benefitted by the work and assessed to pay the cost and expenses thereof.

**1-1.245 Inspector.** - An authorized representative of the Engineer, acting exclusively for the benefit of City, properly assigned to make all necessary inspections of the work performed or being performed, or of the materials furnished or being furnished by the Contractor for conformance to the contract documents.

**1-1.25 Laboratory.** - The established laboratory of the Department or other laboratories authorized by the Department to test materials and work involved in the contract.

**1-1.255 Legal Holidays.** - Those days designated as holidays in the City of San Jose Municipal Code.

**1-1.257 Limit of Work.** - The area described or outlined on the project plans. This area shall constitute the extent of the contractor's operation related to the project.

**1-1.26 Liquidated Damages.** - The amount prescribed in the specifications to be paid to the City or to be deducted from any payments due or to become due the Contractor for each day's delay in completing the whole or any specified portion of the work beyond the time allowed in the specifications.

## SECTION 1

## DEFINITION AND TERMS

**1-1.265 Manual of Traffic Controls.** - The Department of Transportation (Caltrans) publication entitled "MANUAL OF TRAFFIC CONTROLS for Construction and Maintenance Work Zones."

**1-1.267 Material Storage Area** - An area, if any, described or outlined on the project plans to be used by the Contractor for material and equipment storage related to the project.

**1-1.27 Median.** - That portion of a divided highway separating the traveled ways for traffic in opposite directions including inside shoulders.

**1-1.272 Notice of Award of Contract.** - The notice by the City Clerk setting forth particulars and the name of the lowest responsive and responsible bidder awarded the contract for the work.

**1-1.274 Notice to Contractors.** - The advertisement for proposals for all work on which bids are required. Such advertisement will indicate, among other things, the location of the work to be done, bonding requirements, licensing requirements, and the time and place of opening of bids.

**1-1.276 Notice to Proceed.** - The notice issued by the Engineer authorizing the Contractor to proceed with the work, among other particulars.

**1-1.277 Notice of Termination.** - The written notice issued by the Engineer specifying that the contract is terminated.

**1-1.28 Pavement.** - The uppermost layer of material placed on the traveled way or shoulders. This term is used interchangeably with surfacing.

**1-1.29 Plans.** - The official project plans, and Standard Plan Details, profiles, typical cross sections, working drawings and supplemental drawings, or reproductions thereof, approved by the Engineer, which show the location, character, dimensions and details of the work to be performed. All such documents are to be considered as a part of the plans whether or not reproduced in the special provisions.

In the above definition, the following terms are defined as follows:

- (a) **Standard Plan Details** - The Standard Plan Details of the Department, approved by City Council, also referred to herein as Standard Details.
- (b) **Project Plans.** - The project plans are specific details and dimensions peculiar to the work and are supplemented by the Standard Plans insofar as the same apply.

**1-1.295 Private Improvement Contract.** - Any improvement contract financed by a private party other than the City, to be constructed in public or private streets, and easements.

**1-1.30 Processing.** - Any operation or operations of whatever nature and extent required to produce a specified material.



**1-1.31 Proposal.** - The offer of the bidder for the work when made out and submitted on the prescribed proposal form, properly signed and guaranteed, sometimes also referred to herein as a bid.

**1-1.32 Proposal Form.** - The approved form upon which the City requires formal bids be prepared and submitted for the work.

**1-1.33 Proposal Guaranty.** - The cash, cashier's check, certified check, or bidder's bond accompanying the proposal submitted by the bidder, as a guaranty that the bidder will enter into a contract with the City for the performance of the work, if it is awarded to the bidder, and will provide the contract bonds and insurance required of the bidder.

**1-1.334 Right of Way.** - The whole right-of-way or area which is reserved for and secured for use in constructing the improvement and its appurtenances.

**1-1.34 Roadbed.** - The roadbed is that area between the intersection of the upper surface of the roadway and the side slopes or curb lines. The roadbed rises in elevation as each increment or layer of subbase, base, surfacing or pavement is placed. Where the medians are so wide as to include areas of undisturbed land, a divided roadway is considered as including 2 separate roadbeds.

**1-1.35 Roadway.** - That portion of the right of way included between the outside lines of sidewalks, or curbs, slopes, ditches, channels, waterways, and including all the appertaining structures, and other features necessary to proper drainage and protection.

**1-1.36 Shoulders.** - The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

**1-1.37 Special Provisions.** - Specific clauses setting forth conditions or requirements peculiar to the work and supplementary to these Standard Specifications. The State of California Department of Transportation (Caltrans) publications entitled "Labor Surcharge And Equipment Rental Rates" and "General Prevailing Wage Rates" are to be considered as a part of the special provisions.

**1-1.38 Specifications.** - The directions, provisions and requirements contained in these Standard Specifications as supplemented by the special provisions.

**1-1.39 State.** - The State of California.

**1-1.40 (Blank)**

**1-1.41 Subbase.** - A layer of specified material of planned thickness between a base and the basement material.

**1-1.42 Subgrade.** - That portion of the roadbed on which pavement, surfacing, base, subbase, or a layer of any other material is placed.

**1-1.425 Substantial Completion.** - When the work, or designated portion thereof, is sufficiently complete in accordance with the contract documents so that the City can occupy or utilize the work, or designated portion thereof, for the use for which it was intended, as evidenced by the Engineer's Certificate of Substantial Completion. The Certificate of Substantial Completion shall set forth the date on which substantial completion is deemed by City in its sole discretion to have occurred, subject to the provisions of Section 7-1.166 "Substantial Completion."

**1-1.43 Substructure.** - All that part of the bridge below the bridge seats, tops of piers, haunches of rigid frames, or below the spring lines of arches. Backwalls and parapets of abutments and wing walls of bridges shall be considered as parts of the substructure.

**1-1.435 Superintendent of Streets.** - The Superintendent of City Streets of San Jose, also referred to as the "Engineer," "Director of Public Works," or "Director," acting directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

**1-1.44 Superstructure.** - All that part of the bridge except the bridge substructure.

**1-1.45 Surfacing.** - The uppermost layer of material placed on the traveled way, or shoulders. This term is used interchangeably with pavement.

**1-1.46 Traffic Lane.** - That portion of a traveled way for the movement of a single line of vehicles.

**1-1.47 Traveled Way.** - That portion of the roadway for the movement of vehicles, exclusive of shoulders.

**1-1.48 Work.** - All the work specified, indicated, shown or contemplated in the contract to construct the improvement, including, but not limited to, all alterations, amendments or extensions thereto made by contract change order or other written orders of the Engineer.

**1-1.49 Working Day.** - A working day is defined as any day, except as follows:

- (a) Saturdays, Sundays and legal holidays;
- (b) Days on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to the current controlling operation or operations, as determined by the Engineer, from proceeding with at least 75 percent of the normal labor and equipment force engaged on such operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations; or
- (c) Days on which the Contractor is prevented, by reason of requirements in the "Maintaining Traffic" section of the special provisions, from working on the controlling

operation or operations for at least 60 percent of the total daily time being currently spent on such controlling operation or operations.

END OF SECTION

## **SECTION 2**

### **PROPOSAL REQUIREMENTS AND CONDITIONS**

2-1.01	Contents of Proposal Forms
2-1.02	Approximate Estimate
2-1.03	Examination of Plans, Specifications, Contract and Site of Work
2-1.04	Mass Diagram
2-1.05	Proposal Forms
2-1.06	Rejection of Proposals
2-1.07	Proposal Guaranty
2-1.08	Withdrawal of Proposals
2-1.09	Public Opening of Proposals
2-1.095	Relief of Bidders
2-1.10	Disqualification of Bidders
2-1.108	Compliance with Orders of the National Labor Relations Board
2-1.11	Debarment of Bidders
2-1.12	Material Guaranty
2-1.13	Qualification of Bidders
2-1.14	Addenda and Interpretations
2-1.15	Subcontracting Requirements
2-1.15A	Designation of Subcontractors
2-1.15B	Substitution of Subcontractors
2-1.15C	Claims of Inadvertent Clerical Error in Listing of Subcontractor
2-1.15D	Subcontracts Bonding Requirements
2-1.15E	Subcontracting Where No Subcontractor Listed
2-1.15F	Blank
2-1.15G	Violations of Subcontractor Requirements
2-1.15H	Definitions
2-1.16	Filing of Proposals



## SECTION 2

## PROPOSAL REQUIREMENTS AND CONDITIONS

**2-1.01 Contents of Proposal Forms.** - Prospective bidders will be furnished with proposal forms which will state the location and description of the contemplated construction and may show the approximate estimate of the various quantities and kinds of work to be performed or materials to be furnished, with a schedule of items for which bid prices are asked. All special provisions will be grouped together and attached to the proposal form.

**2-1.02 Approximate Estimate.** - The quantities when given in the proposal and contract are approximate only, being given as a basis for the comparison of bids. The City does not, expressly or by implication, represent or agree that the actual amount of work will correspond therewith, and reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable by the Engineer. The bidder shall verify the actual quantities necessary for the work.

Where the City has prepared an engineer's estimate for the cost of the work, such estimate is made only for the purpose of comparison, study and design by City. Such estimate is not a part of the contract and is provided solely for the convenience of the bidder or contractor to use or not as the bidder or Contractor shall deem appropriate. It is expressly understood and agreed that the City assumes no responsibility whatsoever in respect to the sufficiency or accuracy of the estimate thus made, the records thereof, or of the interpretations set forth therein or made by the City in its use thereof and there is no warranty or guaranty, either express or implied, that the estimate or records thereof are accurate representations of the actual cost of construction.

**2-1.03 Examination of Plans, Specifications, Contract, and Site of Work.** - The bidder shall examine carefully the site of the work contemplated, the plans and specifications, and the proposal and contract forms therefor. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and scope of work to be performed, the quantities of materials to be furnished, and as to the requirements of the proposal, plans, specifications, and the contract.

Where the City has made investigations of site conditions including subsurface conditions in areas where work is to be performed under the contract, or in other areas, some of which may constitute possible local material sources, such investigations are made only for the purpose of study and design. Where such investigations have been made, bidders or Contractors may, upon written request, inspect the records of the City as to such investigations subject to and upon the conditions hereinafter set forth. Such inspection of records may be made at the office of the Department.

The records of such investigations are not a part of the contract and are shown solely for the convenience of the bidder or contractor. It is expressly understood and agreed that the City assumes no responsibility whatsoever in respect to the sufficiency or accuracy of the investigations thus made, the records thereof, or of the interpretations set forth therein or made by the City in its use thereof and there is no warranty or guaranty either express or implied, that the conditions indicated by such investigations or records thereof are representative of those

existing throughout such areas, or any part thereof, or that unlooked-for developments may not occur, or that materials other than, or in proportions different from those indicated, may not be encountered.

When a log of test borings or other record of geotechnical data obtained by the City's investigation of subsurface conditions is included with the contract plans, it is expressly understood and agreed that said record does not constitute a part of the contract, represents only the opinion of the City as to the character of the materials or the conditions encountered by it in its investigations at the precise place indicated and the time of year such investigation(s) was made, and is included in the plans only for the convenience of bidders and its use is subject to all of the conditions and limitations set forth in this Section 2-1.03.

In some instances, the information from such site investigations considered by the Department to be of possible interest to bidders or contractors has been compiled as "Materials Information." Said "Materials Information" is not a part of the contract and is furnished solely for the convenience of bidders or contractors. It is understood and agreed that the fact that the Department has compiled the information from such investigations as "Materials Information" and has exhibited or furnished to the bidders or contractors such "Materials Information" shall not be construed as a warranty or guaranty, express or implied, as to the completeness or accuracy of such compilations and the use of such "Materials Information" shall be subject to any of the conditions and limitations set forth in this Section 2-1.03 and Section 6-2, "Local Materials."

When contour maps were used in the design of the project, the bidders may inspect such maps, and if available, they may obtain copies for their use.

The availability or use of information described in this Section 2-1.03 is not to be construed in any way as a waiver of the provisions of the first paragraph in this Section 2-1.03 and a bidder or contractor is cautioned to make such independent investigation and examination as they deem necessary to satisfy themselves as to conditions to be encountered in the performance of the work and, with respect to possible local material sources, the quality and quantity of material available from such property and the type and extent of processing that may be required in order to produce material conforming to the requirements of the specifications.

No information derived from such inspection of records of investigations or compilation thereof will in any way relieve the bidder or contractor from any risk or from properly fulfilling the terms of the contract.

**2-1.04 Mass Diagram.** - If a mass diagram has been prepared for a project, it will be available to the bidders upon the following conditions:

The swell or shrinkage of excavated material and the direction and quantities of haul or overhaul as shown on said mass diagram are for the purpose of design only, and in like manner as provided in Section 2-1.03, "Examination of Plans, Specifications, Contract, and Site of Work," concerning furnishing information resulting from subsurface investigations, the City assumes no responsibility whatever in the interpretation or exactness of any of the information shown on said mass diagram, and does not, either expressly or impliedly, make any guaranty of the same.

**2-1.05 Proposal Forms.** - The City will furnish to each bidder a standard proposal form, which, when filled out and executed shall be submitted as their bid. Bids not presented on forms so furnished may, in the City's sole discretion, be deemed nonresponsive and rejected on that basis.

On all bid items for which bids are to be received on a unit price basis, the unit price for all items bid shall be shown, as well as the extended price (unit price multiplied by the number of units shown on the proposal form) for each bid item bid. In the case of any discrepancy between the extended price for any bid item bid, the unit price multiplied by the number of units shall prevail. In the event of any discrepancy between the total contract amount and the sum of the extended prices of all items, the sum of the extended prices of all items shall prevail.

The proposal form is bound in a book together with the Notice to Contractors, special provisions, and contract. The proposal shall set forth the item prices and totals, in clearly legible figures, in the respective spaces provided and shall be signed by the bidder, who shall fill out all blanks in the proposal form as therein required.

The bidder shall also fill out all blanks in the proposal forms for any alternative to the project proposed by the City; failure to do so may, in the City's sole discretion, result in the proposal being considered nonresponsive and rejected on that basis.

All proposal forms may also be obtained from the Engineer's office in San Jose, California, unless otherwise noted in the Notice to Contractors. No proposals submitted by facsimile (FAX) or any other electronic means will be accepted.

The proposal shall be submitted as directed in the "Notice to Contractors" under sealed cover plainly marked as a proposal, and identifying the project to which the proposal relates and the date of the bid opening therefor. Proposals which are not properly marked may be disregarded at the sole discretion of City.

**2-1.06 Rejection of Proposals.** - The City, in its sole discretion, may reject any or all bids or proposals presented. Proposals may be rejected if (among other things) they show any alteration of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind, or a disproportionate amount of payment being made on any item of work during any phase of the project, or fail to provide a price on all bid items, including all alternates or proposals submitted which are not in strict compliance with the directions in the Notice to Contractors. The City may, in its sole discretion, waive any informalities or minor irregularities in the bid or proposal.

Proposals not submitted in strict compliance with the directions in the Notice to Contractors may, in City's sole discretion, be deemed non-responsive and rejected on that basis.

When proposals are signed by an agent, other than the officer or officers of a corporation authorized to sign contracts on its behalf or a member of a co-partnership, a "Power of Attorney" must be on file with the City Clerk prior to opening bids or shall be submitted with the proposal; otherwise, the proposal may be rejected at the City's sole discretion as irregular and unauthorized.

Proof of the authority of the person or persons signing on behalf of the bidder shall be provided to City upon request after the bid opening.

**2-1.07 Proposal Guaranty.** - All bids shall be presented under sealed cover and accompanied by one of the following forms of bidder's security:



## SECTION 2

## PROPOSAL REQUIREMENTS AND CONDITIONS

Cash, a cashier's check or a certified check made payable to City, or a bidder's bond executed by an admitted surety insurer naming the City as beneficiary.

The security shall be in an amount equal to at least 10 percent of the total amount bid including all alternates. A bid will not be considered unless one of the specified forms of bidder's security is enclosed with it.

A bidder's bond shall conform to the bond form included in the book entitled "Special Provisions, Notice to Contractors, Proposal, and Contract" for the project and shall be properly filled out and executed. The form of bidder's bond included in the said book must be used. Upon request "Bidder's Bond" forms may be obtained from the City.

**2-1.08 Withdrawal of Proposals.** - Any proposal may be withdrawn at any time prior to the time fixed in the Notice to Contractors for the opening of bids only by written request for the withdrawal of the bid filed with the City Clerk. The request shall be executed by the bidder or the bidder's duly authorized representative. The withdrawal of a bid does not prejudice the right of the bidder to file a new bid. Whether or not bids are opened exactly at the time fixed in the Notice to Contractors, a bid will not be received after that time, nor may any bid be withdrawn after the time fixed in the Notice to Contractors for the opening of bids.

**2-1.09 Public Opening of Proposals.** - Proposals will be opened and read publicly at the time and place indicated in the "Notice to Contractors." Bidders or their authorized agents are invited to be present.

**2-1.095 Relief of Bidders.** - After the time set for the opening of bids, a bidder shall not be relieved of their bid unless by consent of the City nor shall any change be made in the bid because of mistake. However, if no relief is granted and the bid guarantee declared forfeit, the bidder may bring an action against the City in a court of competent jurisdiction in Santa Clara County for the recovery of the amount forfeited, without interest or costs.

The complaint shall be filed, and summons served on the Director of Public Works of the City of San Jose, within 90 days after the opening of the bid; otherwise, the action shall be dismissed.

To be relieved of its bid without forfeiture of its bid security the bidder shall establish to the satisfaction of the City, determined in its sole and absolute discretion, that:

- (1) A mistake was made.
- (2) The Contractor gave the City written notice within five working days after the opening of the bids of the mistake, specifying in detail in the notice how the mistake occurred.
- (3) The mistake made the bid materially different than the Contractor intended it to be.
- (4) The mistake was made in filling out the bid and not due to an error in judgment or to carelessness by the Contractor in inspecting the site of the work, or in reading the plans or specifications.

Other than the above described notice to the City, no claim is required to be filed by the bidder before bringing a legal action against the City under this Section to recover a forfeited bid guarantee.

A bidder who claims a mistake and who forfeits its bid guarantee shall be prohibited from participating in further bidding on the project on which the mistake was claimed and security forfeited. However, a bidder who is relieved of its bid without forfeiture of its bid guarantee may bid again on the project if it is put out for rebid.

**2-1.10 Disqualification of Bidders.** - Any one or more of the following causes may, at City's sole discretion, be considered as sufficient for the disqualification of bidder and the rejection of their bid or bids:

1. The bidder has been barred from bidding on City projects under the provisions of the San Jose Municipal Code, Section 14.4.600 et seq.
2. More than one proposal from an individual, firm, partnership, corporation, or combination thereof under the same or different names is received, all such proposals will not be considered.
3. Evidence of collusion among bidders.
4. Lack of competency as revealed by any financial statement, as may be required by the special provisions, or by experience or plant and equipment statements submitted.
5. Lack of responsibility as shown by past work on any Public Works project for any public entity judged from the standpoint of workmanship and progress.
6. Incomplete work on any Public Works project for any public entity which, in the judgment of the City, might hinder or prevent the prompt completion of additional work if awarded.
7. Being in arrears on any existing Public Works contract for any public entity, in litigation with the City, or having defaulted on a previous contract with any public entity.
8. Failure of the bidder to have a valid Contractor's license in the class specified in the Notice to Contractors at the time of bid opening, except as provided for projects where federal funds are involved as specified in Section 7-1.01.
9. Failure of the bidder to provide prices for all items in the proposal, including alternatives, or submitting an incomplete or otherwise non-responsive proposal.
10. Any other ground which the Engineer determines, in the Engineer's sole discretion, significantly impairs the ability of the Contractor to perform on a City project.

**2-1.108 Compliance with Orders of the National Labor Relations Board.** - Pursuant to Public Contract Code Section 10232, the contractor shall swear by a statement, under penalty of perjury, that no more than one final,

## SECTION 2

## PROPOSAL REQUIREMENTS AND CONDITIONS

unappealable finding on contempt of court by a federal court has been issued against the contractor within the immediately preceding 2-year period because of the contractor's failure to comply with an order of a federal court which orders the contractor to comply with an order of the National Labor Relations Board. For purpose of said Section 10232, a finding of contempt does not include any finding which has been vacated, dismissed, or otherwise removed by the court because the Contractor has complied with the order which was the basis for the finding. The City may rescind any contract in which the contractor falsely swears to the truth of the statement required by said Section 10232.

The statement required by said Section 10232 is on the page preceding the signature page of the proposal.

**2-1.11 Debarment of Bidders.** - All bidders are hereby advised that the City has an ordinance in place which precludes certain contractors, subcontractors and suppliers from performing work or providing material or services on City projects. Within 5 days of the date set for the opening of bids, each bidder is responsible for contacting the City to determine which contractors, subcontractors and suppliers have been barred from City projects. A bidder may not submit a bid on any City project which contemplates the use of such contractors, subcontractors or suppliers. The listing of such contractors, subcontractors or suppliers on the bid proposal by any bidder will, at the City's sole option, be grounds for rejecting the bid as nonresponsive.

If after commencement of the work of improvement the City becomes aware that the Contractor to whom the contract has been awarded is using a contractor, subcontractor or supplier who was barred from performing work or providing materials or services on City projects at the time of bid, the City may, in its sole discretion, terminate the contract for cause as provided for elsewhere in these Specifications.

**2-1.12 Material Guaranty.** - The successful bidder may be required to furnish a written guaranty covering certain items of work for varying periods of time from the date of acceptance of the contract. The work to be guaranteed, the form, and the time limit of the guaranty will be specified in the special provisions or as specified in Section 7-1.23, "Final Guarantee". Said guaranty shall be signed and delivered to the Engineer before acceptance of the contract. Upon completion of the contract the amounts of the 2 contract bonds required in Section 3-1.02, "Contract Bonds," may be reduced to conform to the total amount of the contract bid prices for the items of work to be guaranteed, and this amount shall continue in full force and effect for the duration of the guaranty period. The payment bond shall not be reduced until the expiration of the time required by Section 3249 of the Civil Code.

**2-1.13 Qualification of Bidders.** - Each bidder may be required to furnish the City with satisfactory evidence of their competency to perform the work contemplated. The City reserves the right to reject a bidder as not responsible, if the bidder has not submitted a statement of their qualifications, or experience on or before the date of the opening of the proposals.

Each bidder may be required to furnish a statement covering experience on similar work, a list of machinery, plant, other equipment available for the proposed work on or before the date of the opening of the proposals. Bidder shall provide the City with all documents reasonably necessary to perform such

investigation within a reasonable time after a request by the City that the bidders do so. The City reserves the right to make an investigation of information submitted.

The bidder shall also submit a statement relating to their experience in performing construction work similar to that for which the proposal is offered. The bidder shall also file with the City a statement relating to the amount and condition of the equipment as often as may be required by the City. Both the experience and equipment statements referred to shall be submitted in a manner acceptable to the City.

It is the intention of the City to award a contract only to a bidder who furnishes satisfactory evidence that the bidder has the requisite experience and ability and that the bidder has sufficient capital, facilities and plant to enable them to prosecute the work successfully and promptly, and to complete the work within the time specified in the plans and contract.

To determine the degree of responsibility to be credited to a bidder, the City will weigh any evidence that the bidder or personnel guaranteed to be employed by the bidder in responsible charge of the work has or has not performed satisfactorily on other contracts of like nature and magnitude or comparable difficulty at similar rates of progress.

**2-1.14 Addenda and Interpretations.** - Written addenda by way of clarifications, amendments, changes or additions to the Contract Documents including a change to the proposed opening time, date or place may be issued by the City before the opening of proposals. Addenda will be mailed by certified mail with return receipt requested or telephone facsimile (FAX) transmitted to all prospective bidders prior to the opening of bids. Failure of any bidder to receive any addenda shall not relieve the bidder from any obligations imposed by the addenda. All addenda issued shall become part of the contract and the price therefore, set forth in the proposal. The bidder's failure to sign and submit any or all addenda with the bid shall be a cause for rejection of the bid.

Every request for interpretation should be in writing addressed to the Director of Public Works at 801 North First Street, San Jose, CA 95110, and to be given consideration, must be received at least 5 days prior to the date fixed for the opening of bids. Any and all interpretations will be in the form of writing which, if issued, will be mailed by certified mail with return receipt requested or transmitted by telephone facsimile (FAX) to all prospective bidders prior to the opening of bids. Failure of any bidder to receive any interpretation shall not relieve the bidder from any obligation under their bid as submitted and the bidder shall be required to perform the work as modified by the interpretation. All interpretations issued, shall become part of the contract.

No oral interpretation of the meaning of the plans, specifications or other documents will be made. If any such oral interpretation is made, it shall not be considered by the bidder in preparing its proposal.

**2-1.15 Subcontracting Requirements.** - Subcontracting requirements are as follows, and as may be contained in the Special Provisions:

**2-1.15A Designation of Subcontractors.** - Each bidder shall in their proposal set forth:

## SECTION 2

## PROPOSAL REQUIREMENTS AND CONDITIONS

1. The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of 1/2 of one percent of the Contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of 1/2 of one percent of the Contractor's total bid or \$10,000, whichever is greater.
2. The portion of the work which will be done by each subcontractor.
3. The Contractor shall list only one subcontractor for each portion of the work as defined by the Contractor in their proposal.
4. If the Contractor fails to specify a subcontractor or if the Contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of 1/2 of one percent of the Contractor's total proposal, the Contractor agrees that it is fully qualified to perform that portion itself, and that the Contractor shall perform that portion of the work.
5. If after award of the contract, the Contractor subcontracts, without obtaining the consent of the City as provided herein, any such portion of the work, the Contractor shall be subject to the penalties set forth in Section 2.1.15G below.

Circumvention by a Contractor of the requirements of this Section by the device of listing a subcontractor who will in turn sublet portions constituting the majority of the work covered by the contract, shall be considered a violation of this Section and shall subject that Contractor to the penalties set forth in Section 2.1.15G below.

**2-1.15B Substitution of Subcontractors.** - No contractor whose bid is accepted shall:

1. Substitute any person as subcontractor in place of the subcontractor listed in the original bid, except where the City, or its duly authorized officer, may, except as otherwise provided, have consented to the substitution of another person as a subcontractor in any of the following situations:
  - (a) When the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to execute a written contract, when that written contract, based upon the

general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the Contractor.

- (b) When the listed subcontractor becomes bankrupt or insolvent.
- (c) When the listed subcontractor fails or refuses to perform its subcontract.
- (d) When the listed subcontractor fails or refuses to meet the bond requirements of the Contractor as set forth in Section 2-1.15D, below.
- (e) When the Contractor demonstrates to the City, subject to the further provisions set forth in Section 2-1.15C, below, that the name of the subcontractor was listed as the result of an inadvertent clerical error.
- (f) When the listed subcontractor is not licensed at the time of bid pursuant to the Contractors License Law on non-federally funded projects or at the time of award on federally funded projects.
- (g) When the City determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

Prior to approval of the Contractor's request for a substitution of subcontractor, the City shall give notice in writing to the listed subcontractor of the Contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified shall have 5 working days within which to submit written objections to the substitution to the City. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the City shall give notice in writing of at least 5 working days to the listed subcontractor of a hearing by the City on the Contractor's request for substitution.

2. Permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the subcontractor listed in the original bid, without the consent of the City.

3. Other than in the performance of change orders causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of 1/2 of one percent of the prime contractor's total bid as to which the Contractor's original bid did not designate a subcontractor.

**2-1.15C Claims of Inadvertent Clerical Error in Listing of Subcontractor.** - The Contractor as a condition to asserting a claim of inadvertent clerical error in the listing of a subcontractor shall within 2 working days after the time of the bid opening by the City give written notice to the City and copies of that notice to both the subcontractor the Contractor claims to have listed in error and the intended subcontractor who had bid to the Contractor prior to bid opening.

Any listed subcontractor who has been notified by the Contractor in accordance with this section as to an inadvertent clerical error shall be allowed 6 working days from the time of the bid opening within which to submit to the City and to the Contractor written objections to the Contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file the written notice within the 6 working days shall be primary evidence of the listed subcontractor's agreement that an inadvertent clerical error was made.

The City shall, after a hearing and in the absence of compelling reason to the contrary, consent to the substitution of the intended subcontractor if:

1. The Contractor, the subcontractor listed in error, and the intended subcontractor each submit a declaration or affidavit to the City, along with such additional evidence as the parties may wish to submit, that an inadvertent clerical error was in fact made, provided that the declarations or affidavits from each of the 3 parties are filed within 8 working days from the time of the bid opening, or
2. The declarations or affidavits are filed by both the Contractor and the intended subcontractor within the specified time but the subcontractor whom the Contractor claims to have listed in error does not submit within 6 working days, to the City and to the Contractor, written objections to the Contractor's claim of inadvertent clerical error as provided for in this section, or
3. The declarations or affidavits are filed by both the Contractor and the intended subcontractor but the listed subcontractor has, within 6 working days from the time of the bid opening, submitted to the City and to the Contractor written objections to the Contractor's claim of inadvertent clerical error, the City shall investigate the claims of the parties and shall hold a hearing to determine the validity of those claims.

**2-1.15D Subcontractors Bonding Requirements.** - It shall be the responsibility of each subcontractor submitting bids to a Contractor to be prepared

to submit a faithful performance and payment bond or bonds if so requested by the Contractor.

Prior to bid opening, in the event any subcontractor submitting a bid to the Contractor does not, upon the request of the Contractor and, except as provided below, at the expense of the Contractor at the established charge or premium therefor, furnish to the Contractor a bond or bonds issued by an admitted surety wherein the Contractor shall be named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the Contractor may reject the bid and make a substitution of another subcontractor.

The bond or bonds may be required at the expense of the subcontractor only if the Contractor in its written or published request for subbids (1) specified that the expense for the bond or bonds shall be borne by the subcontractor and (2) clearly specifies the amount and requirements of the bond or bonds.

**2-1.15E Subcontracting Where No Subcontractor Listed.** - Subletting or subcontracting of any portion of the work in excess of 1/2 of one percent of the Contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity demonstrated by the Contractor to the satisfaction of the City or upon a finding by the City that it is in the best interest of the City to allow such substitution. The burden shall be upon the Contractor to prove by compelling evidence the benefit to be derived by the City by allowing such a substitution.

**2-1.15F (Blank)**

**2-1.15G Violations of Subcontractor Requirements.** - A contractor violating any of the provisions set forth in Sections 2-1.15A through 2-1.15F is in breach of its contract and the City may exercise the option, in its sole and absolute direction, of (1) canceling the contract or (2) assessing the Contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the contract was awarded. In any proceedings under this section the Contractor shall be entitled to a public hearing and to 5 days notice of the time and place thereof.

The failure on the part of a Contractor to comply with any provision of Sections 2-1.15A through 2-1.15F shall not constitute a defense to the Contractor in any action brought against the Contractor by a subcontractor.

Nothing in this Section shall limit or diminish any rights or remedies, either legal or equitable, which:

1. An original or substituted subcontractor may have against the Contractor, its successors or assigns.
2. The state or any county, city, body politic, or public agency may have against the Contractor, its successors or assigns, including the right to take over and complete the contract.

**2-1.15H Definitions.** - As used in Sections 2-1.15A through 2-1.15G, inclusive, the word "subcontractor" shall mean a contractor, within the meaning of the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the



## SECTION 2

## PROPOSAL REQUIREMENTS AND CONDITIONS

California Business and Professions Code, who contracts directly with the Contractor.

"Contractor" shall mean the Contractor who contracts directly with the City.

**2-1.16 Filing of Proposals.** - All proposals must be filed with the Clerk and Ex-officio Clerk of the City Council, in his or her office in City Hall, on or before the time specified in the Notice to Contractors for opening the proposals.

END OF SECTION

### **SECTION 3**

#### **AWARD AND EXECUTION OF CONTRACT**

3-1.01	Award of Contract
3-1.02	Contract Bonds
3-1.02A	Faithful Performance Bond
3-1.02B	Contractor's Payment Bond
3-1.03	Execution of Contract
3-1.04	Failure to Execute Contract
3-1.05	Return of Proposal Guaranties
3-1.06	Notification of Surety and Insurance Companies
3-1.07	Damages for Collusion



## SECTION 3

## AWARD AND EXECUTION OF CONTRACT

**3-1.01 Award of Contract.** - The City, in its sole discretion, reserves the right to reject any and all proposals.

The award of the contract, if it is awarded, will be to the lowest responsive and responsible bidder whose proposal complies with all the requirements prescribed. If 2 or more bids are the same and lowest, the City may accept either bid it chooses in its sole discretion. Such award, if made, will be made within 90 days after the opening of the proposals. If the lowest responsive bidder refuses or fails to execute the contract, the City may award the contract to the second lowest responsive and responsible bidder. Such award, if made, will be made within 105 days after the opening of the proposals. If the second lowest responsive bidder refuses or fails to execute the contract, the City may award the contract to the third lowest responsive and responsible bidder. Such award, if made, will be made within 120 days after the opening of the proposals. The Department of Public Works may proceed in like manner until the Director either finds a responsible and responsive bidder willing to be awarded the contract or determines that it is not in the best interest of the City to proceed further. The periods of time specified above within which the award of contract may be made shall be subject to extension for such further period as may be agreed upon in writing between the Director and the bidder concerned.

All bids will be compared on the basis of the Engineer's Estimate of the quantities of work to be done.

**3-1.02 Contract Bonds.** - Except as provided by Section 14.04.440 and Section 14.04.460 of the San Jose municipal code, the successful bidder shall, at the time of executing the contract, file the following bonds with the City. Bonds shall be in the same form as those bound with the special provisions.

**3-1.02A Faithful Performance Bond.** - The faithful performance bond shall be a bond in the penal sum of at least 100 percent of the contract price, secured by 2 or more sufficient sureties approved by the Director of Finance or by an admitted surety company, conditioned upon the Contractor's faithful performance of the contract terms within the contract time. In addition, if the Contractor fails to complete the contract within the time fixed in the contract, or such extension thereof as may be allowed by the City, the contract may, by that fact, be terminated for cause and the City shall not thereafter pay or allow the Contractor any further compensation for any work done by the Contractor under said contract, and the Contractor or their sureties shall be liable to the City for all loss or damage which City may suffer by reason of the Contractor's failure to complete their contract within such time. The time limit in the contract for the completion of the work may be extended by the City in accordance with the provisions of Section 8-1.07 "Liquidated Damages."

**3-1.02B Contractor's Payment Bond.** - The payment bond shall be a good and sufficient bond approved by the City in an amount not less than 100 percent of the contract price. To be approved, bond must provide that if the Contractor or their subcontractor fails to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment

Insurance Code with respect to the work or labor contracted to be done and performed by any claimant, then the surety or sureties will pay for same, in an amount not exceeding the amount of the bond, and also, in case suit is brought upon the bond, a reasonable attorney's fee to be fixed by the court. To be approved, the bond must be issued by an admitted surety and shall, by its term, inure to the benefit of any of the persons named in Section 3181 of the California Civil Code, to give a right of action to such persons or their assigns in any suit brought upon the bond, including the right of action to recover on the bond, in any suit brought to foreclose the liens provided for in Title 15, Part 4, Division 3 of the California Civil Code or in a separate suit brought on this bond. The Bond shall otherwise comply with all of the provisions of Title 15, Part 4, Division 3 of the California Civil Code.

Unless a Contractor's Payment Bond is filed and approved as herein provided, no claim in favor of the Contractor arising under the contract shall be audited, allowed or paid by the City. Any persons named in Section 3181 of the Civil Code of the State of California, shall receive payment of their respective claims in the manner provided by Chapter 4, Part 4, Division 3, Title 15 of the Civil Code of the State of California upon having complied with the conditions of Section 3183 of the Civil Code.

**3-1.03 Execution of Contract.** - The contract shall be signed by the successful bidder and returned, together with the contract bonds and insurance, within 8 days, not including Saturdays, Sundays and legal holidays, after the bidder has received notice that the contract has been awarded.

**3-1.04 Failure to Execute Contract.** - Failure of a responsive and responsible bidder to execute the contract and file acceptable bonds and insurance as provided herein within 8 days, not including Saturdays, Sundays and legal holidays, after such bidder has received notice that the contract has been awarded to them shall be just cause in the City's sole discretion for voiding the award and the forfeiture of the proposal guaranty. The successful bidder may file with the City a written notice, signed by the bidder or their authorized representative, specifying that the bidder will refuse to execute the contract if presented to the bidder. The filing of such notice shall have the same force and effect as the failure of the bidder to execute the contract and furnish acceptable bonds within the time hereinbefore prescribed.

**3-1.05 Return of Proposal Guaranties.** - Until the award and execution by the Contractor of the contract, the Engineer shall hold the proposal guarantees of the three lowest bidders. Any other bid proposal guarantees may be released by the Engineer when the Engineer determines in the Engineer's sole discretion that the best interest of the City would not be served by retaining such proposal guarantees.

**3-1.06 Notification of Surety and Insurance Companies.** - The surety companies and other signers of any of the above mentioned bonds, and all insurance companies, shall familiarize themselves with all of the conditions and provisions of this contract, and they waive the right of special notification of any change or modification of this contract or of extension of time, or of decreased or increased work, or of the cancellation of the contract, or of any other act or acts by the City or its authorized agents, under the terms of this contract, and failure to notify the

sureties or insurance companies of changes shall not relieve the sureties or insurance companies of their obligation under this contract.

**3-1.07 Damages for Collusion.** - If at any time it is found that the person, firm, or corporation to whom the contract has been awarded, in presenting any bid or bids, colluded with any other party or parties, then the contract awarded may be declared by the City to be null and void, and the Contractor and their sureties shall be liable to the City for all loss or damage which the City may have suffered as a result of such collusion, and the City may re-advertise anew for bids for said work.

END OF SECTION

## **SECTION 4**

### **SCOPE OF WORK**

4-1.01	Intent of Plans and Specifications
4-1.02	Final Cleaning Up
4-1.03	Changes
4-1.03A	Procedure and Protest
4-1.03B	Increased or Decreased Quantities
4-1.03B(1)	Increases of More than 25 Percent
4-1.03B(2)	Decreases of More than 25 Percent
4-1.03B(3)	Eliminated Items
4-1.03C	Changes in Character of Work
4-1.03D	Extra Work
4-1.03E	Revocable Contract Items
4-1.04	Detours
4-1.05	Use of Materials Found on the Work
4-1.07	Differing Site Conditions





## SECTION 4

## SCOPE OF WORK

**4-1.01 Intent of Plans and Specifications.** - The intent of the plans and specifications is to prescribe the details for the construction and completion of the work which the Contractor undertakes to perform in accordance with the terms of the contract. Where the plans or specifications describe portions of the work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment and incidentals, and do all the work involved in executing the contract in a satisfactory and workmanlike manner.

**4-1.02 Final Cleaning Up.** - Before final inspection of the work, the Contractor shall clean the job site, highway, material sites, and all ground occupied by the Contractor in connection with the work of all rubbish, excess materials, falsework, temporary structures, and equipment. All parts of the work shall be left in a neat and presentable condition. Full compensation for final cleaning up will be considered as included in the prices paid for the various contract items of work and no separate payment will be made therefor.

Nothing herein, however, shall require the Contractor to remove warning, regulatory, and guide signs prior to formal acceptance by the Director.

**4-1.03 Changes.** - The City reserves the right to make such alterations, deviations, additions to or deletions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work or to delete any item or portion of the work, as may be deemed by the City to be necessary for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work to be done in connection with the change made, adjustment of contract time, if any, and the basis of full compensation for such work. A contract change order will not become effective until approved by the City.

Upon receipt of an approved contract change order, the Contractor shall proceed with the ordered work. If ordered in writing by the City, by letter of intent to perform extra work, executed by the Director or the Director's properly authorized agent, the Contractor shall proceed with the work so ordered prior to actual receipt of an approved contract change order therefor. In such cases, the City will, as soon as practicable, issue an approved contract change order for such work and the provisions in Section 4-1.03A, "Procedure and Protest," shall be fully applicable to such subsequently issued contract change order.

When the compensation for an item of work is subject to adjustment under the provisions of this Section 4-1.03, the Contractor shall, upon request, furnish the Engineer with adequate detailed cost data for such item of work. If the Contractor requests an adjustment in compensation for an item of work as provided in Sections 4-1.03B (1) or 4-1.03B (2), such cost data shall be submitted with their request.

If City proposes to Contractor that Contractor perform work by way of change order, and the City and Contractor cannot agree upon a price for performing such change order work, City has the right to issue to Contractor a "Directed Change Order" requiring Contractor to perform work at the price and on the terms

which City, in its sole discretion, shall deem reasonable. Contractor will thereafter perform work for the price and on the terms set forth in such change order. The Contractor shall not have the right to terminate the contract based upon the issuance of a "Directed Change Order." Contractor may then make a claim as provided for in this contract for any additional compensation, or time extension, or both which the Contractor believes is due and owing to them for performing such work.

The compensation provided for in each and every change order shall include all costs and taxes applicable thereto, and the City shall not be liable for any increase in taxes during the term of change order work.

The overhead and profit markup on each and every change order shall include full compensation for all costs incurred by the Contractor for any additional time required to complete the change order.

**4-1.03A Procedure and Protest.** - A contract change order approved by the City may be issued to the Contractor at any time. Should the Contractor disagree with any terms or conditions set forth in an approved contract change order which the Contractor has not executed, the Contractor shall submit a written protest to the City, within 15 days after the receipt of such approved contract change order. The protest shall state the points of disagreement, and, if possible, the contract specification references, quantities, and costs involved. If a written protest is not submitted, payment will be made as set forth in the approved contract change order and such payment shall constitute full compensation for all work included therein or required thereby. Such unprotested approved contract change orders will be considered as executed contract change orders as that term is used in Sections 4-1.03B to 4-1.03D, inclusive.

Where the protest concerning an approved contract change order relates to compensation, the compensation payable for all work specified or required by said contract change order to which such protest relates will be determined as provided in Sections 4-1.03B to 4-1.03D, inclusive. The Contractor shall keep full and complete records of the cost of such work and shall permit the City to have such access thereto as may be necessary to assist the City in making determination of the compensation payable for such work.

Where the protest concerning an approved contract change order relates to the adjustment of contract time for the completion of the work, the time to be allowed therefor will be determined as provided in Section 8-1.07, "Liquidated Damages."

Proposed contract change orders may be presented to the Contractor for consideration prior to approval by the City. If the Contractor signifies acceptance of the terms and conditions of such proposed contract change order by executing such document and if such change order is approved by the City and issued to the Contractor, payment in accordance with the provisions as to compensation therein set forth shall constitute full compensation for all work included therein or required thereby. A contract change order executed by the Contractor and approved by the City is an executed contract change order as that term is used in Sections 4-1.03B to 4-1.03D, inclusive. An approved contract change order shall supersede a proposed, but unapproved, contract change order covering the same work.

The City may provide for an adjustment of compensation as to a contract item of work included in a contract change order determined as provided in Sections 4-1.03B to 4-1.03D, inclusive, if such item of work is eligible for an adjustment of compensation thereunder.

**4-1.03B Increased or Decreased Quantities.** - Increases or decreases in the quantity of a contract item of work will be determined by comparing the total pay quantity of such item of work with the Engineer's Estimate therefor.

If the total pay quantity of any item of work required under the contract varies from the Engineer's Estimate therefor by 25 percent or less, payment will be made for the quantity of work of said item performed at the contract unit price therefor, unless eligible for adjustment pursuant to Section 4-1.03C, "Changes in Character of Work."

If the total pay quantity of any item of work required under the contract varies from the Engineer's Estimate therefor by more than 25 percent, in the absence of an executed contract change order specifying the compensation to be paid, the compensation payable to the Contractor will be determined in accordance with Sections 4-1.03B(1), 4-1.03B(2), or 4-1.03B(3), as the case may be, except as provided in Section 4-1.03E.

**4-1.03B(1) Increases of More Than 25 Percent.** - Should the total pay quantity of any item of work required under the contract exceed the Engineer's Estimate therefor by more than 25 percent, the work in excess of 125 percent of such estimate and not covered by an executed contract change order specifying the compensation to be paid therefor will be paid for by adjusting the contract unit price, as hereinafter provided, or at the sole option of the City, payment for the work involved in such excess will be made on the basis of force account as provided in Section 9-1.03, "Force Account Payment."

Such adjustment of the contract unit price will be the difference between the contract unit price and the actual unit cost, which will be determined as hereinafter provided, of the total quantity of the item. If the costs applicable to such item of work include fixed costs, such fixed costs will be deemed to have been recovered by the Contractor by the payments made for 125 percent of the Engineer's Estimate of the quantity for such item, and in computing the actual unit cost, such fixed costs will be excluded. Subject to the above provisions, such actual unit cost will be determined by the City in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-1.03, or such adjustment will be as agreed to by the Contractor and the City.

When the compensation payable for the number of units of an item of work performed in excess of 125 percent of the Engineer's Estimate is less than \$5,000 at the applicable contract unit price, the Engineer reserves the right to make no adjustment in said price if the Engineer so elects, except that an adjustment will be made if requested in writing by the Contractor within 10 working days from the date the Contractor became aware, or should have reasonably become aware, of the increase.

**4-1.03B(2) Decreases of More Than 25 Percent.** - Should the total pay quantity of any item of work required under the contract be less than 75 percent of the Engineer's Estimate therefor, an adjustment in compensation pursuant to this Section will not be made unless the Contractor so requests in writing within 10 working days from the date when the Contractor became aware, or should have reasonably become aware, of the decrease. If the Contractor so requests, the quantity of said item performed, unless covered by an executed contract change order specifying the compensation payable therefor, will be paid for by adjusting the contract unit price as hereinafter provided, or at the option of the City payment for the quantity of the work of such item performed will be made on the basis of

force account as provided in Section 9-1.03, provided however, that in no case shall the payment for such work be less than that which would be made at the contract unit price.

Such adjustment of the contract unit price will be the difference between the contract unit price and the actual unit cost, which will be determined as hereinafter provided, of the total pay quantity of the item, including fixed costs. Such actual unit cost will be determined by the City in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-1.03, or such adjustment will be as agreed to by the Contractor and the City.

The payment for the total pay quantity of such item of work will in no case exceed the payment which would be made for the performance of 75 percent of the Engineer's Estimate of the quantity for such item at the original contract unit price.

**4-1.03B(3) Eliminated Items.** - Should any contract item of the work be eliminated in its entirety for any reason, including but not limited to the convenience of the City, in the absence of an executed contract change order covering such elimination, payment will be made to the Contractor for actual costs incurred in connection with such eliminated contract item if incurred prior to the date of notification in writing by the City of such elimination.

If acceptable material is ordered by the Contractor for the eliminated item prior to the date of notification of such elimination by the City, and if orders for such material cannot be canceled, it will be paid for at the actual cost to the Contractor. In such case, the material paid for shall become the property of the City and the actual cost of any further handling will be paid. If the material is returnable to the vendor and if the Engineer so directs, the material shall be returned and the Contractor will be paid for the actual cost of charges made by the vendor for returning the material. The actual cost of handling returned material will be paid.

The actual costs or charges to be paid by the City to the Contractor as provided in this Section 4-1.03B (3) will be computed in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-1.03, "Force Account Payment."

**4-1.03C Changes in Character of Work.** - If an ordered change in the plans or specifications materially changes the character of the work of a contract item from that on which the Contractor based their bid price, and if the change increases or decreases the actual unit cost of such changed item as compared to the actual or estimated actual unit cost of performing the work of said item in accordance with the plans and specifications originally applicable thereto, in the absence of an executed contract change order specifying the compensation payable, an adjustment in compensation therefor will be made in accordance with the following.

The basis of such adjustment in compensation will be the difference between the actual unit cost to perform the work of said item or portion thereof involved in the change as originally planned and the actual unit cost of performing the work of said item or portion thereof involved in the change, as changed. Actual unit costs will be determined by the City in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-1.03, or such adjustment will be as agreed to by the Contractor and the City. Any such adjustment will apply only to the portion of the work of said item actually changed in character. At the option of the City, the work of said item or portion of item

which is changed in character will be paid for by force account as provided in Section 9-1.03.

If the compensation for an item of work is adjusted under this Section 4-1.03C, the costs recognized in determining such adjustment shall be excluded from consideration in making an adjustment for such item of work under the provisions in Section 4-1.03B, "Increased or Decreased Quantities."

Failure of the City to recognize a change in character of the work at the time the approved contract change order is issued shall not be construed as relieving the Contractor of their duty and responsibility of filing a written protest within the 15 day limit as provided in Section 4-1.03A, "Procedure and Protest."

**4-1.03D Extra Work.** - New and unforeseen work will be classed as extra work when determined by the City that such work is not covered by any of the various items for which there is a bid price or by combinations of such items. In the event portions of such work are determined by the City to be covered by some of the various items for which there is a bid price or combinations of such items, the remaining portion of such work will be classed as extra work. Extra work also includes work specifically designated as extra work in the plans or specifications.

The Contractor shall do such extra work and furnish labor, material, and equipment therefor upon receipt of an approved contract change order or other written order of the City, and in the absence of such approved contract change order or other written order of the City the Contractor shall not be entitled to payment for such extra work.

Payment for extra work required to be performed pursuant to the provisions in this Section 4-1.03D, in the absence of an executed contract change order, will be made by force account as provided in Section 9-1.03, or as agreed to by the Contractor and the City.

**4-1.03E Revocable Contract Items.** - Items noted as "Revocable" in the Proposal may be deleted entirely or in part at the sole discretion of the City. The provisions of Section 4-1.03B "Increased or Decreased Quantities" shall not apply to entire or partial deletion of Revocable items.

**4-1.04 Detours.** - The Contractor shall construct and remove detours and detour bridges for the use of public traffic as provided in the special provisions, or as shown on the plans, or as directed by the Engineer. Payment for such work will be made as set forth in the special provisions or at the contract prices for the items of work involved if the work being performed is covered by contract items of work and no other method of payment therefor is provided in the special provisions, otherwise the work will be paid for as extra work as provided in Section 4-1.03D

When public traffic is routed through the work, provision for a passageway through construction operations will not be considered as detour construction or detour maintenance and such work shall conform to and be paid for as provided in Section 7-1.08, "Public Convenience," unless otherwise specified in the special provisions.

Detours used exclusively by the Contractor for hauling materials and equipment shall be constructed and maintained by the Contractor at their expense. The failure or refusal of the Contractor to construct and maintain detours at the proper time shall be sufficient cause for closing down the work until such detours are in satisfactory condition for use by public traffic. Contractor shall not be

allowed additional compensation or an extension of time to complete the work due to such as suspension of work order.

Where the Contractor's hauling is causing such damage to the detour that its maintenance in a condition satisfactory for public traffic is made difficult and unusually expensive, the Engineer shall have authority to regulate the Contractor's hauling over the detour.

**4-1.05 Use of Materials Found on the Work.** - Unless designated as selected material as provided in Section 19-2.07, "Selected Material," the Contractor, with the approval of the Engineer, may use in the proposed construction such stone, gravel, sand or other material suitable in the opinion of the Engineer as may be found in excavation. The Contractor will be paid for the excavation of such materials at the contract price for such excavation, but the Contractor shall replace at their expense with other suitable material all of that portion of the material so removed and used which was contemplated for use in the work, except that the Contractor need not replace, at their expense, any material obtained from structure excavation used as structure backfill. No charge for materials so used will be made against the Contractor. The Contractor shall not excavate or remove any material from within the highway location that is not within the excavation, as indicated by the slope and grade lines, without written authorization from the Engineer.

**4-1.07 Differing Site Conditions.** - For all excavations extending deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:

1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the California Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
2. Subsurface or latent physical conditions at the site differing from those indicated in the contract documents.
3. Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's costs of, or the time required for, performance of any part of the work, City shall issue a change order under the procedures described in the contract documents.

In the event a dispute arises between the City and the Contractor as to whether or not the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights

provided either by the contract documents or by law which pertain to the resolution of disputes and protests between the contracting parties.

**END OF SECTION**

## **SECTION 5 CONTROL OF WORK**

5-1.01	Authority of Engineer
5-1.02	Plans and Working Drawings
5-1.02A	Trench Excavation Safety Plans
5-1.03	Conformity With Contract Documents and Allowable Deviations
5-1.04	Coordination and Interpretation of Plans, Standard Specification, and Special Provisions
5-1.04A	Record Drawings
5-1.04B	Arrangement
5-1.05	Order of Work
5-1.06	Superintendence
5-1.065	Status of Contractor
5-1.07	Lines and Grades
5-1.08	Inspection
5-1.08A	Inspection for Sole Benefit of the City
5-1.09	Removal of Rejected and Unauthorized Work
5-1.09A	Acceptance of Defective or Nonconforming Work
5-1.09B	Modification to Contractor's Work
5-1.10	Equipment and Plants
5-1.11	Alternative Equipment
5-1.115	Alternative Methods of Construction
5-1.12	Character of Workers
5-1.13	Final Inspection
5-1.14	Cost Reduction Incentive
5-1.15	Project Appearance
5-1.16	Conferences





## SECTION 5

## CONTROL OF WORK

**5-1.01 Authority of Engineer.** - It will be the Engineer's duty to inspect materials and workmanship for all deviations from the drawings, specifications and other contract provision which may come to the Engineer's notice. Such inspection is for the sole benefit of the City and shall not act as a waiver of defects in the work. The Engineer shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract on the part of the Contractor, and all questions as to compensation. The Engineer's decision shall be final and the Engineer shall have authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly. The engineer shall have the right to order the work stopped, if in the Engineer's opinion such action becomes necessary, until the Engineer has determined and ordered that the work may proceed in due fulfillment of all contract requirements.

**5-1.02 Plans and Working Drawings.** - The contract plans furnished consist of general drawings and show such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the contract plans shall be in writing.

The contract plans shall be supplemented by such working drawings prepared by the Contractor as are necessary to adequately control the work. No change shall be made by the Contractor in any working drawing after it has been reviewed by the Engineer without the further written approval.

Working drawings for any part of the permanent work shall include, but not be limited to: stress sheets, anchor bolt layouts, shop details, erection plans, equipment lists and any other information specifically required elsewhere in the specifications.

Working drawings for cribs, cofferdams, falsework, temporary support systems, haul bridges, centering and form work and for other temporary work and methods of construction the Contractor proposes to use, shall be submitted when required by the specifications or ordered by the Engineer. Such working drawings shall be subject to review by the Engineer insofar as the details affect the character of the finished work and for compliance with design requirements applicable to the construction when specified or called for, but details of design will be left to the Contractor who shall be responsible for the successful construction of the work.

Working drawings shall be reviewed by the Engineer before any work involving such drawings is performed. It is expressly understood that review of the Contractor's working drawings shall not relieve the Contractor of any responsibility under the contract for the successful completion of the work in conformity with the requirements of the plans and specifications. Such review shall not operate to waive any of the requirements of the plans and specifications or relieve the Contractor of any obligation thereunder, and defective work, materials and equipment may be rejected notwithstanding such review.

Working drawings for any structure shall consist of such detailed plans as may be required for the prosecution of the work and are not included in the plans

furnished by the Engineer. They shall include shop details, erection plans, masonry layout diagrams, and bending diagrams for reinforcing steel, which shall be approved by the Engineer before any work involving these plans is performed. Plans for cribs, cofferdams, falsework, centering and form work shall be required and shall be subject to approval unless approval be waived by the Engineer. These plans will be subject to approval insofar as the details affect the character of the finished work, but other details of design will be left to the contractor, who shall be responsible for the successful construction of the work.

It is expressly understood, however, that approval by the Engineer of the Contractor's working drawings does not relieve the contractor of any responsibility for accuracy of dimensions and details, or for mutual agreement of dimensions and details. It is mutually agreed that the contractor shall be responsible for agreement and conformity of his working drawings with approved plans and specifications and Special Provisions.

Full compensation for furnishing all working drawings shall be considered as included in the prices paid for the contract items of work to which such drawings relate and no additional compensation will be allowed therefor.

The Engineer's review of working drawings, and other submittals submitted for the Engineer's review by the Contractor shall not act as a waiver of defects subsequently discovered in such documents or in work performed by the Contractor in reliance on those documents.

Working drawings and schedules shall be submitted in such number as required by the Engineer, accompanied by letter of transmittal which shall give a list of the numbers and dates of the drawings submitted. Working drawings shall be complete in every respect and bound in sets. Unless otherwise requested, six copies of working drawings and schedules shall be submitted for approval.

The Contractor shall submit all working drawings and schedules sufficiently in advance of construction requirements to allow ample time for checking, corrections, resubmitting and rechecking.

The Engineer's review of the Contractor's plans shall in no way be construed to impose tort liability on the City or any of its officers or employees by reason of any damage to property or person, including death resulting from or arising out of the use of such plan, and the Contractor shall indemnify and hold harmless the City, its officers and employees from any loss or liability resulting from the use of such plans.

The Contractor shall keep on the work a copy of the plans and specifications including all authorized change orders, and shall at all times give the Engineer and the Engineer's representatives access thereto.

Plans and specifications and copies thereof furnished by the Engineer shall not be used on other projects without the Engineer's consent.

**5-1.02A Trench Excavation Safety Plans.** - Attention is directed to Section 7-1.01E, "Trench Safety." The Contractor shall, before beginning any excavation or trench work, 5 feet or more in depth, secure a permit "to perform Excavation or Trenchwork," from the State of California, Division of Industrial Safety. Excavation for any trench 5 feet or more in depth shall not begin until completion of review by the Engineer, of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench. Such plan shall be submitted at least 5 days before the Contractor intends to begin excavation for the trench and shall show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during such

excavation. No such plan shall allow the use of shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health and if such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a Civil or Structural Engineer in the State of California.

The acceptance of the copy of the permit "to perform Excavation or Trench work," or review by the Engineer of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of trenches, shall in no way be construed to impose tort liability on the City or any of its officers or employees by reason of any damage to person, including death or property resulting from or arising out of the use of such plan, and the Contractor shall be fully responsible for any such damage, and the Contractor shall indemnify and hold harmless the City, its officers and employees from any loss or liability resulting from the use of such plan.

The permit together with a copy of approved plan for trench safety shall be maintained on the job site at all times.

**5-1.03 Conformity With Contract Documents and Allowable Deviations.** - Work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, shown on the plans or indicated in the specifications. Although measurement, sampling and testing may be considered evidence as to such conformity, the Engineer shall be the sole judge as to whether the work or materials deviate from the plans and specifications, and the Engineer's decision as to any allowable deviations therefrom shall be final.

**5-1.04 Coordination and Interpretation of Plans, Standard Specifications, and Special Provisions.** - These Standard Specifications, the Standard Plan Details, project plans, special provisions, contract change orders, and all supplementary documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary, and to describe and provide for a complete work.

In case of conflict between the Standard Specifications and Standard Plan Details, the project plans and the special provisions, the order of precedence shall be as follows:

1. Special Provisions
2. Project Plans
3. Standard Plan Details
4. Standard Specifications

Should it appear that the work to be done or any of the matters relative thereto are not sufficiently detailed or explained in these specifications, the special provisions, or the plans, the Contractor shall apply to the Engineer for such further explanations as may be necessary and shall conform to them as part of the contract. In the event of any doubt or question arising respecting the true meaning of these specifications, the special provisions or the plans, reference shall be made to the Engineer, whose decision thereon shall be final.

If the Contractor, in the course of the work, discovers any discrepancies between the plans and the conditions actually encountered at the Project site, or any errors or omissions in the plans or in the layout given by stakes, points or

instructions, it shall be the Contractor's duty to inform the Engineer immediately in writing; and the Engineer shall promptly investigate the same. Any work done after such discovery, until authorized will be done at the Contractor's risk.

In the event of any discrepancy, between any drawing and the figures written thereon, the figures shall be taken as correct. Detail drawings shall prevail over general drawings.

The headings and titles printed on the plans and in these general conditions, in the specifications and elsewhere in the contract documents, are inserted for the convenience of reference only, and shall not be taken or considered as having any bearing on the interpretation thereof.

**5-1.04A Record Drawings.** - The Contractor shall keep and maintain, on the job site, one record set of Drawings. On these, the Contractor shall mark all project conditions, locations, configurations, and any other changes or deviations which may vary from the details represented on the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated in the Contract Documents. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to indicate, fully, the work as actually constructed. These master record drawings of the contractor's representation of as built conditions, including all revisions made necessary by addenda, change orders, and the like shall be maintained up to date during the progress of the work.

In the case of those drawings which depict the detailed requirements for equipment to be assembled and wired in the factory, such as motor control centers and the like, the record drawing shall be updated by indicating those portions which are superseded by change order drawings or final shop drawings, and by including appropriate reference information describing the change orders by number and the shop drawings by manufacturer, drawing, and revision numbers.

Record drawings shall be accessible to the Engineer at all times during the construction period and shall be delivered to the Engineer upon completion of the Work.

Final payment will not be approved until the Contractor prepared record drawings have been delivered to the Engineer. Said up to date record drawings may be in the form of a set of prints with carefully plotted information as approved by the Engineer.

Upon substantial completion of the Work and prior to final acceptance, the Contractor shall complete and deliver a complete set of record drawings to the Engineer for transmittal to the City, conforming to the construction records of the Contractor. This set of drawings shall consist of corrected plans showing the reported location of the Work. The information submitted by the Contractor and incorporated by the Engineer into the Record Drawings will be assumed to be reliable, and the Engineer will not be responsible for the accuracy of such information, nor for any errors or omissions which may appear on the Record Drawings as a result.

**5-1.04B Arrangement.** - The specifications and drawings herein referred to are arranged and numbered for convenience. Such arrangement and numbering shall not limit the work required by any separate trade. The terms and conditions

of limitation are between Contractor and their sub-contractors. The General Conditions apply to all work including authorized extras.

**5-1.05 Order of Work.** - When required by the special provisions or plans, the Contractor shall follow the sequence of operations as set forth therein.

Full compensation for conforming to such requirements will be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

**5-1.06 Superintendence.** - The Contractor shall designate in writing before starting work, an authorized representative who shall have the authority to represent and act for the Contractor.

When the Contractor is comprised of 2 or more persons, firms, partnerships, or corporations functioning on a joint venture basis, said Contractor shall designate in writing before starting work, the name of one authorized representative who shall have the authority to represent and act for the Contractor.

Said authorized representative shall be present at the site of the work at all times while work is actually in progress on the contract. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work which may be required.

Whenever the Contractor or their authorized representative is not present on any particular part of the work where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given.

Any order given by the Engineer, not otherwise required by the specifications to be in writing, will on request of the Contractor, be given or confirmed by the Engineer in writing.

The Engineer shall be supplied at all times with the names and telephone numbers of at least 2 persons in charge of or responsible for the work who can be reached for emergency work 24 hours a day, 7 days a week.

**5-1.065 Status of Contractor.** - The City's right of supervision hereunder shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons or to public or private property arising from the Contractor's execution of the work, shall not be lessened because of such supervision.

**5-1.07 Lines and Grades.** - Such stakes or marks will be set by the Engineer as the Engineer determines to be necessary to establish the lines and grades required for the completion of the work specified in these specifications, on the plans and in the special provisions.

When the Contractor requires such stakes or marks, the Contractor shall notify the Engineer of the Contractor's requirements in writing a reasonable length of time in advance of starting operations that require such stakes or marks. In no event, shall a notice of less than 2 working days be considered a reasonable length of time.

Stakes and marks set by the Engineer shall be carefully preserved by the Contractor. In case such stakes and marks are destroyed or damaged, they will be replaced at the Engineer's earliest convenience. The Contractor will be charged for the cost of necessary replacement or restoration of stakes and marks which in the

judgment of the Engineer were carelessly or willfully destroyed or damaged by the Contractor's operations. This charge will be deducted from any moneys due or to become due the Contractor.

The Contractor shall not disturb any monuments found within the area of the work or improvements unless they have first procured written permission from the Engineer. The Contractor shall bear the expense of resetting any monuments which may be disturbed or damaged or removed without such permission.

**5-1.08 Inspection.** - The Engineer shall, at all times, have safe access to the work during its construction, and shall be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of these specifications, the special provisions, and the plans. All work done and all materials furnished shall be subject to the Engineer's inspection.

The inspection of the work or materials shall not relieve the Contractor of any obligations to fulfill the contract as prescribed. Work and materials not meeting such requirements shall be made good and unsuitable work or materials may be rejected, notwithstanding that such work or materials have been previously inspected by the Engineer or that payment therefor has been included in a progress estimate.

Projects financed in whole or in part with Federal, State, County or Regional agency funds or otherwise subject to the jurisdiction or control by another public entity, shall be subject to inspection at all times by the appropriate Federal, State, County, or Regional agency or other public entity involved.

The Contractor shall notify the Engineer at least 24 hours in advance of the time required for the services of the Inspector. Should the Contractor fail to notify the Engineer and proceeds with work requiring inspection, all said work shall be rejected by the Engineer. The work so rejected may be subsequently accepted by the Engineer only after receipt of the certification described below and only if the Engineer approves such certification. Should the Contractor request acceptance of such rejected work the Contractor shall, at the Contractor's sole expense, secure the services of: private material testing laboratories, consulting engineers or licensed land surveyors, as previously approved by the City, who shall certify that said work does, in fact, conform to the requirements of the plans and these specifications.

Neither the inspection by the project engineer nor by an inspector, nor any order, measurement, approved notification, certificate, or payment of money, or acceptance of any part or whole of the work, nor any extension of time, nor any possession by the City or its agents, shall operate as a waiver of any provision of this Contract or of any power reserved therein to the City or its agents, shall operate as a waiver of any provision of this contract or of any power reserved therein to the City, or any right to damage thereunder; nor shall any waiver by the City of any breach of this Contract be held to be a waiver of any subsequent breach of the same provision or any other provision of the contract. All remedies shall be taken and construed as cumulative.

**5-1.08A Inspection for Sole Benefit of the City.** - The Contractor is hereby advised that inspection of the Contractor's work during the contract is for the sole and exclusive benefit of the City. Such inspection shall not relieve the Contractor from any obligation to perform the work pursuant to the plans and

specifications, even if defects or deficiencies in such work were noted or observed at the time of such inspection and not communicated to the Contractor.

**5-1.09 Removal of Rejected and Unauthorized Work.** - All work which has been rejected shall be remedied, or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed to the Contractor for such removal, replacement, or remedial work. Any work done beyond the lines and grades shown on the plans or established by the Engineer, or any extra work done without written authority from the City will be considered as unauthorized work and will not be paid for. Upon order of the Engineer, unauthorized work shall be remedied, removed, or replaced at the Contractor's expense.

Upon failure of the Contractor to comply promptly with any order of the Engineer made under this Section 5-1.09, the Engineer may cause rejected or unauthorized work to be remedied, removed, or replaced, and to deduct the costs from any moneys due or to become due the Contractor.

**5-1.09A Acceptance of Defective or Nonconforming Work.** - If the City prefers to accept defective or nonconforming work, the City may do so in its sole discretion and without the consent of the Contractor instead of requiring its removal and correction, in which case a written Change Order will be issued to reflect a reduction in the contract amount. Such adjustment shall be effected whether or not final payment has been made. Acceptance of defective or nonconforming work may occur only upon issuance by the City of a written Change Order or as set forth above.

**5-1.09B Modification to Contractor's Work.** - The City may modify the Contractor's work, either before or after acceptance of the project, without commencing or voiding any of the warranties or accepting, in part or in whole, the Contractor's work. Notification of the City's intent to modify the Contractor's work will be made in writing 48 hours prior to commencement of the modification. Whenever the City makes a claim against the Contractor for defective workmanship or materials, it shall be the sole obligation of the Contractor to establish that the defect being complained of was due solely to a modification, if any, made by the City.

**5-1.10 Equipment and Plants.** - Only equipment and plants suitable to produce the quality of work and materials required will be permitted to operate on the project.

Plants shall be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity to insure the production of sufficient material to carry the work to completion within the time limit.

The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered by the Engineer, shall remove unsuitable equipment from the work and discontinue the operation of unsatisfactory plants.

The Contractor shall identify each piece of their equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location, and shall furnish to the Engineer a list giving the description of each piece of equipment and its identifying number. In addition, the make, model number and empty gross weight of each unit of compacting



equipment shall be plainly stamped or stenciled in a conspicuous place on the unit. The gross weight shall be either the manufacturer's rated weight or the scale weight.

The make, model, serial number and manufacturer's rated capacity for each scale shall be clearly stamped or stenciled on the load receiving element and its indicator or indicators. All meters shall be similarly identified, rated and marked. Upon request of the Engineer, the Contractor shall furnish a statement by the manufacturer, designating sectional and weighbridge capacities of portable vehicle scales.

Each machine or unit of equipment shall be operated by an experienced operator skilled in handling the particular make of machine or unit of equipment in use, at a speed or rate of production not to exceed that recommended by the manufacturer.

All vehicles used to haul materials over existing traveled ways shall be equipped with pneumatic tires and operated within legal wheel load limits.

**5-1.11 Alternative Equipment.** - While certain of these specifications may provide that equipment of a particular size and type is to be used to perform portions of the work, it is to be understood that the development and use of new or improved equipment is to be encouraged.

The Contractor may request, in writing, permission from the Engineer to use equipment of a different size or type in place of the equipment specified.

The Engineer, before considering or granting such request, may require the Contractor to furnish, at the Contractor's expense, evidence satisfactory to the Engineer that the equipment proposed for use by the Contractor is capable of producing work equal to, or better than, that which can be produced by the equipment specified.

If such permission is granted by the Engineer, it shall be understood that such permission is granted for the purpose of testing the quality of work actually produced by such equipment and is subject to continuous attainment of results which, in the opinion of the Engineer, are equal to, or better than, that which can be obtained with the equipment specified. The Engineer shall have the right to withdraw such permission at any time that the Engineer determines that the alternative equipment is not producing work that is equal, in all respects, to that which can be produced by the equipment specified. Upon withdrawal of such permission by the Engineer, the Contractor will be required to use the equipment originally specified and shall, in accordance with the directions of the Engineer, remove and dispose of or otherwise remedy, at the Contractor's expense, any defective or unsatisfactory work produced with the alternative equipment.

Neither the City nor the Contractor shall have any claim against the other for either the withholding or the granting of permission to use alternative equipment, or for the withdrawal of such permission.

Permission to use alternative equipment in place of equipment specified will only be granted where such equipment is new or improved and its use is deemed by the Engineer to be in furtherance of the purposes of this Section 5-1.11. The approval for use of particular equipment on any project shall in no way be considered as an approval of the use of such equipment on any other project.

Nothing in this Section 5-1.11 shall relieve the Contractor of responsibility for furnishing materials or producing finished work of the quality specified in these specifications or in the special provisions.

**5-1.115 Alternative Methods of Construction.** - Whenever the plans or specifications provide that more than one specified method of construction or more than one specified type of material or construction equipment may be used to perform portions of the work and leave the selection of the method of construction or the type of material or equipment to be used up to the Contractor, it is understood that the City does not guarantee that every such method of construction or type of material or equipment can be used successfully throughout all or any part of any project. It shall be the Contractor's responsibility to select and use the alternative or alternatives which will satisfactorily perform the work under the conditions encountered. In the event some of the alternatives are not feasible or it is necessary to use more than one of the alternatives on any project, full compensation for any additional cost involved shall be considered as included in the contract price paid for the item of work involved and no additional compensation will be allowed therefor.

**5-1.12 Character of Workers.** - If any subcontractor or person employed by the Contractor shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, they shall be discharged from the work immediately on the request of the Engineer without cost to the City, and such person shall not again be employed on the work.

**5-1.13 Final Inspection.** - When the work has been completed, the Engineer will make the final inspection.

**5-1.14 Cost Reduction Incentive.** - The Contractor may submit to the Engineer, in writing, proposals for modifying the plans, specifications or other requirements of the contract for the sole purpose of reducing the total cost of construction. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards.

Cost reduction proposals shall contain the following information:

1. A description of both the existing contract requirements for performing the work and the proposed changes.
2. An itemization of the contract requirements that must be changed if the proposal is adopted.
3. A detailed estimate of the cost of performing the work under the existing contract and under the proposed change. The estimates of cost shall be determined in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-1.03, "Force Account Payment."
4. A statement of the time within which the Engineer must make a decision thereon.
5. The contract items of work affected by the proposed changes, including any quantity variation attributable thereto.

The provisions of this Section 5-1.14 shall not be construed to require the Engineer to consider any cost reduction proposal which may be submitted

hereunder; proposed changes in basic design of a bridge or of a pavement type will not be considered as an acceptable cost reduction proposal; the City will not be liable to the Contractor for failure to accept or act upon any cost reduction proposal submitted pursuant to this section nor for any delays to the work attributable to any such proposal. If a cost reduction proposal is similar to a change in the plans or specifications, under consideration by the City for the project, at the time said proposal is submitted or if such a proposal is based upon or similar to Standard Specifications, standard special provisions or Standard Plans adopted by the City after the advertisement for the contract, the Engineer will not accept such proposal and the City reserves the right to make such changes without compensation to the Contractor under the provisions of this section.

The Contractor shall continue to perform the work in accordance with the requirements of the contract until an executed change order, incorporating the cost reduction proposal has been issued. If an executed change order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision thereon should be made, or such other date as the Contractor may subsequently have specified in writing, such cost reduction proposal shall be deemed rejected.

The Engineer shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the right is reserved to disregard the contract bid prices if in the judgment of the Engineer, such prices do not represent a fair measure of the value of work to be performed or to be deleted.

The City reserves the right where it deems such action appropriate, to require the Contractor to pay in part or whole the City's costs of investigating a cost reduction proposal submitted by the Contractor as a condition of considering such proposal. Where such a condition is imposed, the Contractor shall indicate acceptance thereof in writing, and such acceptance shall constitute full authority for the City to deduct amounts payable to the City from any monies due or that may become due to the Contractor under the contract.

If the Contractor's cost reduction proposal is accepted in whole or in part, such acceptance will be by a contract change order, which shall specifically state that it is executed pursuant to this Section 5-1.14. Such change order shall incorporate the changes in the plans and specifications which are necessary to permit the cost reduction proposal or such part of it as has been accepted to be put into effect, and shall include any conditions upon which the City's approval thereof is based if the approval of the City is conditional. The change order shall also set forth the estimated net savings in construction costs attributable to the cost reduction proposal effectuated by the change order, and shall further provide that the Contractor be paid 50 percent of said estimated net savings amount. The Contractor's cost of preparing the cost reduction incentive proposal and the City's cost of investigating a cost reduction incentive proposal, including any portion thereof paid by the Contractor, shall be excluded from consideration in determining the estimated net savings in construction costs.

Acceptance of the cost reduction proposal and performance of the work thereunder shall not extend the time of completion of the contract unless specifically provided for in the contract change order authorizing the use of the cost reduction proposal.

The amount specified to be paid to the Contractor in the change order which effectuates a cost reduction proposal shall constitute full compensation to the

Contractor for the cost reduction proposal and the performance of the work thereof pursuant to the said change order.

The City expressly reserves the right to adopt a cost reduction proposal for general use on contracts administered by the City when it determines that said proposal is suitable for application to other contracts. When an accepted cost reduction proposal is adopted for general use, only the Contractor who first submitted such proposal will be eligible for compensation pursuant to this section, and in that case, only as to those contracts awarded to the Contractor prior to submission of the accepted cost reduction proposal and as to which such cost reduction proposal is also submitted and accepted. Cost reduction proposals identical or similar to previously submitted proposals will be eligible for consideration and compensation under the provisions of this Section 5-1.14 if the identical or similar previously submitted proposals were not adopted for general application to other contracts administered by the City. Subject to the provisions contained herein, the City or any other public agency shall have the right to use all or any part of any submitted cost reduction proposal without obligation or compensation of any kind to the Contractor.

This Section 5-1.14 of the specifications shall apply only to contracts awarded to the lowest bidder pursuant to competitive bidding.

**5-1.15 Project Appearance.** - The Contractor shall maintain a neat appearance to the work. In any area visible to the public, the following shall apply:

When practicable, broken concrete and debris developed during clearing and grubbing shall be disposed of concurrently with its removal. If stockpiling is necessary, the material shall be removed or disposed of daily unless otherwise specified in the special provisions or as directed by the Engineer.

The Contractor shall furnish trash bins for all construction debris. All debris shall be placed in trash bins daily. Forms or falsework that are to be re-used shall be stacked neatly concurrently with their removal. Forms and falsework that are not to be re-used shall be disposed of concurrently with their removal.

The Contractor shall not sweep construction and other debris into the storm drainage system and shall prevent such materials from entering the storm drains.

The Contractor is advised that disposal of dirt and other debris into the public storm drain system is prohibited under the San Jose Municipal Code and under California State Fish & Game Code. Any fines or penalties levied against the Contractor for violation of the above and related regulations are the sole responsibility of the Contractor.

Except as otherwise provided as a separate pay item, full compensation for conforming to the provisions in this Section shall be considered as included in prices paid for the various contract items of work involved and no additional compensation will be allowed therefor.

**5-1.16 Conferences.** - At any time during progress of the work, the Engineer shall have authority to require the Contractor and any subcontractors and/or suppliers at any tier to attend a job-site conference. Any notice of such

## **SECTION 5**

## **CONTROL OF WORK**

conference shall be duly observed and complied with by the Contractor and Subcontractors and suppliers.

**END OF SECTION**

## **SECTION 6**

### **CONTROL OF MATERIALS**

6-1.01	Source of Supply and Quality of Materials
6-1.02	City Furnished Materials
6-1.03	Storage of Materials
6-1.04	Defective Materials
6-1.05	Trade Names and Alternatives
6-1.05A	No Warranty for Listed Material Supplier or Equipment Manufacturer
6-1.06	Plant Inspection
6-1.07	Certificates of Compliance
6-1.08	Foreign Materials
6-1.09	State Specification Numbers
6-1.10	Commencement of Warranty
6-1.11	Samples
6-2.01	General (Local Materials)
6-2.02	Possible Local Material Sources
6-2.03	Mandatory Local Material Sources
6-3.01	General (Testing)
6-3.02	Blank
6-3.03	Statistical Testing
6-3.04	Field Tests, Adjustments and Operations



## SECTION 6

## CONTROL OF MATERIALS

## 6-1 GENERAL

**6-1.01 Source of Supply and Quality of Materials.** - The Contractor shall furnish all materials required to complete the work, except materials that are designated in the specifications to be furnished by the City and materials furnished by the City in accordance with Section 9-1.03, "Force Account Payment."

Only materials conforming to the requirements of the specifications shall be incorporated in the work.

The materials furnished and used shall be new, except as may be provided elsewhere in these specifications, on the plans or in the special provisions. The materials shall be manufactured, handled, and used in a workmanlike manner to insure completed work in accordance with the plans and specifications.

Materials to be used in the work will be subject to inspection and tests by the Engineer or the Engineer's designated representative. The Contractor shall furnish without charge such samples as may be required. The Contractor shall furnish the Engineer a list of sources of materials and the locations at which such materials will be available for inspection. The list shall be submitted on a City furnished form and shall be furnished to the Engineer in sufficient time to permit inspecting and testing of materials to be furnished from such listed sources in advance of their use. After testing, if it is found that the proposed sources of supply do not furnish a uniform product, or if the product from any such sources proves unacceptable at any time, the Contractor shall furnish approved material from other sources subject to prior approval of City. No material which, even after approval, has in any way become unfit for use shall be used in the work. The Engineer may inspect, sample or test materials at the source of supply or other locations, but such inspection, sampling or testing will not be undertaken until the Engineer is assured by the Contractor of the cooperation and assistance of both the Contractor and the supplier of the material. The Contractor shall assure that the Engineer or the Engineer's authorized representative has free access at all times to the material to be inspected, sampled or tested. It is understood that such inspections and tests in no way shall be considered as a guaranty of acceptance of such material nor of continued acceptance of material presumed to be similar to that upon which inspections and tests have been made, and that inspection and testing performed by the City shall not relieve the Contractor or the Contractor's suppliers of responsibility for quality control.

Manufacturers' warranties, guaranties, instruction sheets and parts lists, which are furnished with certain articles or materials incorporated in the work, shall be delivered to the Engineer before acceptance of the contract.

Reports and records of inspections made and tests performed, when available at the site of the work, may be examined by the Contractor.

**6-1.02 City Furnished Materials.** - Materials which are listed as City furnished materials in the special provisions will be available to the Contractor free of charge, unless otherwise specified.

The Contractor shall submit a written request to the Engineer for the delivery of City furnished material at least 15 days in advance of the date of its intended use, except that the written request for the delivery of City furnished sign



panels for roadside signs and overhead sign structures shall be submitted at least 30 days in advance of their intended installation. The request shall state the quantity and the type of each material.

The locations at which City furnished materials will be available to the Contractor free of charge will be designated in the special provisions. In such cases said materials shall be hauled to the site of the work by the Contractor at the Contractor's expense, including any necessary loading and unloading that may be involved. If the locations are not designated in the special provisions, the City furnished materials will be furnished to the Contractor free of charge at the site of the project. In either case, all costs of handling and placing City furnished material shall be considered as included in the price paid for the contract item involving such City furnished material.

The Contractor shall be responsible for all materials furnished to the Contractor and shall pay all demurrage and storage charges. City furnished materials lost or damaged from any cause whatsoever shall be replaced by the Contractor at the Contractor's expense. The Contractor shall be liable to the City for the cost of replacing City furnished material and such costs may be deducted from any monies due or to become due the Contractor.

All City furnished material that is not used on the work shall remain the property of the City and shall be delivered to the Engineer.

The Engineer may increase the number of sign panels in any shipment to provide economical use of the City's transportation facilities.

The quantity of each type of City furnished paint required shall be determined by the Contractor subject to verification by the Engineer.

**6-1.03 Storage of Materials.** - Articles or materials to be incorporated in the work shall be stored in such a manner as to insure the preservation of their quality and fitness for the work, and to facilitate inspection.

**6-1.04 Defective Materials.** - All materials which the Engineer has determined do not conform to the requirements of the plans and specifications will be rejected whether in place or not. They shall be removed immediately from the site of the work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used in the work, unless approval in writing has been given by the Engineer. Upon failure of the Contractor to comply promptly with any order of the Engineer made under the provisions in this Section 6-1.04, the Engineer shall have authority to cause the removal and replacement of rejected material and to deduct the cost thereof from any moneys due or to become due the Contractor.

**6-1.05 Trade Names and Alternatives.** - For convenience in designation on the plans or in the specifications, certain articles or materials, to be incorporated in the work may be designated under a trade name or the name of a manufacturer and catalog information and followed by the words "or equal." The use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor and the Contractor shall furnish all information necessary as required by the Engineer. The Engineer shall be the sole judge as to the quality

and suitability of alternative articles or materials and the Engineer's decision shall be final.

Whenever the specifications permit the substitution of a similar or equivalent material or article, no tests or action relating to the approval of such substitute material will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the material or article proposed. Such request shall be made in ample time to permit approval without delaying the work, but need not be made in less than 35 days after award of the contract.

Wherever in the contract documents the name or the name and address of a manufacturer or supplier is given for a material, product, or equipment, or if any other source of a material, product, or equipment is indicated therefor, such information is given for the convenience of the Contractor only, and no limit, restriction, or direction is indicated or intended thereby, nor is the accuracy or reliability of such information guaranteed. It shall be the responsibility of the Contractor to determine the accurate identity and location of any such manufacturer, supplier, or other source of any material, product, or equipment called for in the contract documents.

Approval by the Engineer of substitute item proposed by the Contractor shall not relieve Contractor of the responsibility for full compliance with the contract documents and for adequacy of the substituted item. The Contractor shall also be responsible for resultant changes and all additional costs which the substitution requires in its work, the work of subcontractors and of other contractors and shall effect such changes without cost to the City.

**6-1.05A No Warranty for Listed Material Supplier or Equipment Manufacturer.** - The City does not warrant nor guarantee the ability of any material supplier or equipment manufacturer listed in the specifications to perform their work in a timely manner or in a manner acceptable to City. Furthermore, the City does not warrant that such materials or equipment installed and in place will be acceptable to the City.

**6-1.06 Plant Inspection.** - The Engineer may inspect the production of material, or the manufacture of products at the source of supply. Plant inspection however, will not be undertaken until the Engineer is assured of the cooperation and assistance of both the Contractor and the material producer. The Engineer or the Engineer's authorized representative shall have free entry at all times to such parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The City assumes no obligation to inspect materials at the source of supply.

**6-1.07 Certificates of Compliance.** - A Certificate of Compliance shall be furnished prior to the use of any materials for which these specifications or the special provisions require that such a certificate be furnished. In addition, when so authorized in these specifications or in the special provisions, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the specifications. A Certificate of Compliance shall be furnished with each lot of

material delivered to the work and the lot so certified shall be clearly identified in the certificate.

All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the work which conforms to the requirements of the plans and specifications and any such material not conforming to such requirements will be subject to rejection whether in place or not.

The City reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

**6-1.08 Foreign Materials.** - Materials which are manufactured, produced or fabricated outside of the United States shall be delivered to a distribution point in the San Francisco Bay Area, unless otherwise required in these specifications or the special provisions, where they shall be retained for a sufficient period of time to permit inspection, sampling, and testing. Attention is directed to the provisions in Section 8-1.07, "Liquidated Damages." The Contractor shall not be entitled to an extension of time for acts or events occurring outside of the United States and it shall be the Contractor's responsibility to deliver materials obtained from outside of the United States to the point of entry into the continental United States in sufficient time to permit timely delivery to the job site.

The Contractor, at no cost to the City, shall supply the facilities and arrange for any testing required in California which the City is not equipped to perform. All testing by the Contractor shall be subject to witnessing by the Engineer.

The manufacturer, producer or fabricator of foreign material shall furnish to the Engineer a Certificate of Compliance in accordance with the provisions in Section 6-1.07, "Certificates of Compliance." In addition, certified mill test reports clearly identifiable to the lot of material shall be furnished where required in these specifications or otherwise requested by the Engineer.

If the welding of steel for structural steel members or the casting and prestressing of precast prestressed concrete members is to be performed outside of the United States, the following requirements shall apply:

1. Such fabrication shall be performed only within the plants and by fabricators who have previously established, to the satisfaction of the Engineer, that they have the experience, knowledge, trained manpower, quality controls, equipment and other facilities required to produce the quality and quantity of work required. At the option of the Engineer, prequalification of the plant and fabricator will be established either by the submission of detailed written proof thereof or through in-plant inspection by the Engineer or the Engineer's representative, or both.
2. The Contractor shall make written application to the Engineer for approval for such foreign fabrication at the earliest possible time and, in no case, later than 50 days in advance of the planned start of fabrication. The

application shall list the specific units or portion of a work which will be fabricated outside of the United States.

3. The Contractor shall advise the Engineer, in writing, at least 20 days in advance of the actual start of any such foreign fabrication.
4. All documents pertaining to the contract, including but not limited to, correspondence, bid documents, working drawings and data shall be written in the English language and all numerical data shall use the foot-pound-second system of units of measurement.

The use of steel manufactured outside of the United States as unidentified stock material, as provided in Caltrans Section 55-2.07, "Unidentified Stock Material," will not be allowed.

**6-1.09 State Specification Numbers.** - The State Specification number of material furnished on the contract shall conform to the number specified in these specifications or the special provisions for the material involved, except that material conforming to a later specification issue will be acceptable.

**6-1.10 Commencement of Warranty.** - Unless expressly agreed to in writing by the City, all warranties required under the contract documents shall commence upon acceptance by the City of the entire project. Use or occupancy by the City of a portion of the project either before or after completion of that portion of the work shall not commence the running of any warranty required under the contract documents.

**6-1.11 Samples.** - All materials must be of specified quality and fully equal to samples previously submitted. The Contractor shall furnish to the Engineer for testing, free of charge, samples of all materials proposed to be used in the work, and also samples of completed Portland cement concrete or asphaltic concrete work. When so required by the Engineer, the Contractor shall submit for approval samples of the various materials, together with the finish thereon, as specified for that intended to be used in the work. All materials and workmanship shall be equal in every respect to that of the samples so submitted and approved. These samples shall be sent to such place as the Engineer may direct. In all cases, freight must be prepaid by the Contractor. These samples will be returned to the Contractor, if requested, freight collect.

Where samples are called for, 2 or more samples of materials to be used in fulfilling the requirements of the specifications shall be deposited with the Engineer as soon as possible prior to their use in the work.

No materials or equipment of which samples are required to be submitted for approval shall be used on the work until such approval has been given by the Engineer, save only at the Contractor's risk and expense.

## 6-2 LOCAL MATERIALS

**6-2.01 General.** - Local material is rock, sand, gravel, earth, or other mineral material, other than local borrow or selected material, obtained or produced

## SECTION 6

## CONTROL OF MATERIALS

from sources in the vicinity of the work specifically for use on the project. Local material does not include materials obtained from established commercial sources.

Local materials shall be furnished by the Contractor from any source the Contractor may elect, except that when mandatory local material sources of certain materials are designated in the special provisions, the Contractor shall furnish material from such designated mandatory sources.

The Contractor shall be responsible for making all arrangements necessary to obtain materials from any local material source other than a mandatory local material source. If the Contractor elects to obtain materials from a possible local material source, subject to the provisions of Section 6.02, "Possible Local Material Sources," the Contractor shall comply with the requirements of said section. If the Contractor elects to obtain material from any other non-mandatory source, the Contractor shall furnish the Engineer with satisfactory evidence that the Contractor has entered into an agreement with the property owner for obtaining material from such source and with copies of any necessary permits, licenses and environmental clearances before removing any material from such sources.

The furnishing of local materials from any source is subject to the provisions in Section 2-1.03, "Examination of Plans, Specifications, Contract, and Site of Work," and in Section 6-2, "Local Materials."

Unless described in the special provisions as a mandatory local material source, or approved in writing by the Engineer, material sources shall not be excavated at locations where the resulting scars will present an unsightly appearance from any highway. No payment will be made for material obtained in violation of this provision.

The Contractor shall, at the Contractor's expense, make any arrangements necessary for hauling over local public and private roads from any source.

When requested by the Contractor in writing, the City will test materials from any local material source, which has not been previously tested. If satisfactory material from such local source is used in the work, the Contractor will not be charged for the costs of the tests.

In all other cases, the cost of such testing requested by the Contractor shall be at the Contractor's expense and deductions will be made from any moneys due or to become due the Contractor, sufficient to cover the costs of such tests.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in conforming to the provisions in this Section 6-2.01, for furnishing and producing materials from any source shall be considered as included in the price paid for the contract item of work involving such material and no additional compensation will be allowed therefor.

**6-2.02 Possible Local Material Sources.** - Where the City has made arrangements with owners of land in the vicinity of a project for the obtaining of material from an owner's property, such arrangements are made solely for the purpose of providing all bidders an equal opportunity to obtain material from such property. Bidders or Contractors may, upon written request, inspect the documents evidencing such arrangements between property owners and the City. The Contractor may, if so elect, exercise any rights that have been obtained, which may be exercised by a Contractor under such arrangements, subject to and upon the conditions hereinafter set forth.

Such arrangements are not a part of the contract, and it is expressly understood and agreed that the City assumes no responsibility to the bidder or Contractor whatsoever in respect to the arrangements made with the property owner

to obtain materials therefrom and that the Contractor shall assume all risks in connection with the use of such property, the terms upon which such use shall be made, and there is no warranty or guaranty, either express or implied, as to the quality or quantity of materials that can be obtained or produced from such property or the type or extent of processing that may be required in order to produce material conforming to the requirements of the specifications.

In those instances in which the City has compiled "Materials Information" as referred to in Section 2-1.03, "Examination of Plans, Specifications Contract, and Site of Work," said compilation may include the documents setting forth the arrangement made with some of the property owners for the obtaining of material from such owners' properties. The inclusion of such documents therein shall not in any respect operate as a waiver of any of the provisions in this Section 6-2.02 concerning said documents. All necessary permits, licenses and environmental clearances needed to enable the Contractor to use a possible local material source for which the "Materials Information" compilation for the project does not include said permits, licenses and environmental clearances issued to the Department (whether or not the arrangement made by the City with the owner of the property is included in the compilation) shall be obtained by the Contractor and copies thereof shall be furnished the Engineer before any material is removed from such source. The Bidder or Contractor is cautioned to make such independent investigation and examination as the bidder or Contractor deems necessary for their satisfaction as to the quality and quantity of materials available from such property, the type and extent of processing that may be required in order to produce material conforming to the requirements of the specifications and the rights, duties and obligations acquired or undertaken under such arrangement with the property owner. Notwithstanding that the Contractor may elect to obtain materials from any such property owner's property, no material may be obtained from such property unless the Contractor has first either:

- (1) Executed a document that will guarantee to hold such owner harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises and also agree to conform to all other provisions set forth in the arrangement made between the City and the property owner. Said document will be prepared by the Engineer for execution by the Contractor, or
- (2) Entered into an agreement with the owner of the material source on any terms mutually agreeable to the owner and the Contractor; provided that the Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the owner, relieving the City of any and all obligations under the City's arrangement with the owner.

If the Contractor elects to obtain material under (1), the use of such site shall be subject to the terms, conditions and limitations of the arrangement made between the property owner and the City, and the Contractor shall pay such charges as are provided for in the arrangement made by the City with the property owner, and deductions will be made from any moneys due or that may become due the

Contractor under the contract sufficient to cover the charges for such material removed.

If the Contractor elects to obtain material under (2), the Contractor shall pay such charges as are provided for in the agreement between the owner and the Contractor and deductions will not be made from any moneys due or that may become due the Contractor under the contract to cover such charges.

Before acceptance of the contract, the Engineer may require the Contractor to submit written evidence that the owner of the material source is satisfied that the Contractor has satisfactorily complied with the provisions of either (1), the arrangement between the City and the owner, or (2), the agreement between the owner and the Contractor, as the case may be.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in furnishing and producing specified materials from possible local material sources, including the construction of any access roads or fences and any clearing, grubbing and stripping of material sources, and all processing of whatever nature and extent required, shall be considered as included in the price paid for the contract item of work involving such material and no additional compensation will be allowed therefor.

**6-2.03 Mandatory Local Material Sources.** - The Contractor shall perform all work required to obtain and produce acceptable materials from the mandatory local material sources designated in the special provisions and the Contractor shall have no right to obtain such materials from any other source or sources. As part of such work in producing acceptable materials from the mandatory sources, it will be necessary for the Contractor to perform certain processing of the material as set forth in the special provisions. Any processing of the material required in addition to that specified in the special provisions which, in the opinion of the Engineer, is necessary to produce acceptable material from the mandatory sources will be paid for as extra work as provided in Section 4-1.03D.

If the Engineer determines that the designated mandatory local material source or sources are no longer to be used because they are exhausted or for other reasons, the Engineer will designate an alternative mandatory local material source or sources from which the Contractor shall obtain the balance of the material required.

In such case the City will pay the Contractor for the cost of moving the Contractor's plant to such new mandatory source and erecting it as extra work as provided in Section 4-1.03D. Construction of access roads, fences, clearing and grubbing or stripping of such new mandatory source, ordered by the Engineer to be performed, will be paid for as extra work as provided in Section 4-1.03D. The Department will also allow or deduct, as the case may be, the increase or decrease in haul cost due to an increase or decrease in the length of haul involved. Increased haul costs will be paid for as extra work as provided in Section 4-1.03D and deductions for decreased haul will be determined in the same manner. No allowance or additional compensation will be made for lost time or for delay in completing the work due to moving the Contractor's plant from the designated mandatory source to the alternative mandatory source, other than an extension of time pursuant to the provisions in Section 8-1.07, "Liquidated Damages." Any processing of the material required in addition to that specified in the special provisions for the originally designated mandatory source which, in the opinion of the Engineer, is necessary to produce acceptable material from the alternative mandatory source will be paid for as extra work as provided in Section 4-1.03D.

The Contractor will be charged the same royalty as provided in the special provisions for the original designated mandatory local material source.

The Contractor shall, prior to entering a mandatory local material source or an alternative mandatory local material source, execute a document that will guarantee to hold the owner of such property harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises. Said document will be prepared by the Engineer for execution by the Contractor.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in obtaining and producing specified materials from mandatory sources, including the construction of any access roads or fences and any clearing, grubbing, and stripping of mandatory local material sources, except as otherwise provided for in this Section 6-2.03, shall be considered as included in the price paid for the contract item of work involving such material and no additional compensation will be allowed therefor.

### 6-3 TESTING

**6-3.01 General.** - Unless otherwise specified, all tests shall be performed in accordance with the methods used by the Department of Public Works, and shall be made by the Engineer or the Engineer's designated representative.

The City uses Caltrans and American Society for Testing and Material (ASTM) developed methods for testing the quality of materials and work. These methods are identified by number and are referred to in the specifications as California and ASTM Tests. Copies of individual California Tests are available at the City's Material Testing Laboratory.

Whenever the specifications require compliance with specified values for the following properties, tests will be made by the California Test indicated unless otherwise specified:

Properties	California Test
Relative Compaction .....	216 or 231
Sand Equivalent .....	217
Resistance (R-value) .....	301
Grading (Sieve Analysis) .....	202
Durability Index .....	229

Whenever a reference is made in the specifications to a California Test by number, it shall mean the California Test in effect on the day the Notice to Contractors for the work is dated.

Whenever the specifications provide an option between 2 or more tests, the Engineer will determine the test to be used.

Whenever a reference is made in the specifications to a specification, manual, or test designation either of the American Society for Testing and Materials, the American Association of State Highway and Transportation Officials, Federal Specifications, or any other recognized national organization, and the number or other identification representing the year of adoption or latest revision is omitted, it shall mean the specification, manual, or test designation in effect on the day the Notice to Contractors for the work is dated. Whenever said specification manual or test designation provides for test reports (such as certified mill test reports) from the manufacturer, copies of such reports, identified as to the lot of



material, shall be furnished to the Engineer. The manufacturer's test reports shall supplement the inspection, sampling and testing provisions in Section 6, "Control of Materials," and shall not constitute a waiver of the City's right to inspect. When material which cannot be identified with specific test reports is proposed for use, the Engineer may, at the Engineer's discretion, select random samples from the lot for testing. Test specimens from the random samples, including those required for retest, shall be prepared in accordance with the referenced specification and furnished by the Contractor at the Contractor's expense. The number of such samples and test specimens shall be entirely at the discretion of the Engineer. Unidentified metal products such as sheet, plate, hardware, etc. shall be subject to the requirements of Caltrans Section 55-2.07, "Unidentified Stock Material."

When requested by the Engineer, the Contractor shall furnish, without charge, samples of all materials entering into the work, and no material shall be used prior to approval by the Engineer, except as provided in Section 6-1.07, "Certificates of Compliance." Samples of material from local sources shall be taken by or in the presence of the Engineer, otherwise the samples will not be considered for testing.

### **6-3.02 Blank**

**6-3.03 Statistical Testing.** - Whenever both individual test results and operating range requirements are specified in these specifications or the Special Provisions, materials shall meet both requirements. Materials used in the work to replace materials which did not comply with requirements and were removed shall conform to the limits specified for the operating range.

Individual samples tested prior to the first use of aggregates from each source, or prior to the first use of aggregates after appreciable changes have been made in aggregate processing procedures, shall conform to the limits specified for the operating range.

If individual test results on materials used in the work do not fall within specified limits, but the operating range utilizing such test results is within the specified operating range limits, the individual test results may be waived at the discretion of the Engineer. No test result for material used in the work shall be omitted from the operating range determination.

Operating ranges shall be computed as follows:

Operating ranges shall be rounded to the same number of significant figures as are reported for individual test results. When the figure to be dropped is less than 5, round down; if greater than 5, round up, and if it is 5, round up or down to the even number.

Operating ranges shall be continuous for the entire project. In determining an operating range for a material property, all of the individual test results that represent material actually used in the work, except individual test results for portions of such material for which requirements have been revised by an executed contract change order, shall be used in the calculation. The test results shall enter the calculation sequence in the chronological order that the work is performed. The first individual test results shall start an operating range and shall meet the operating range requirements. Until more than 4 test results are available, the operating range shall be the numerical average of the individual test results. When

more than 4 test results are available, the operating range shall be determined by adding the last 4 individual test results, adding the new individual test results to this product and then dividing this sum by 5.

Where more than one source is used for a single material and the sources are not similar in all respects, a separate operating range shall be calculated for each source.

Where a single source provides material to more than one project, a separate operating range shall be calculated for each project. A single test result representing material delivered to different projects shall be used in each operating range for which it is appropriate and separate tests will not be required.

If individual test results on materials used in the work do not fall within specified limits, but the operating range utilizing such test results is within the specified operating range limits, the individual test results may be waived at the discretion of the Engineer. No individual test result for material used in the work shall be omitted from the operating range determination.

**6-3.04 Field Tests, or Adjustments and Operations.** - The Contractor shall arrange for the presence of a manufacturer's representative or other qualified persons who shall instruct City operating personal in the operation and care of all the various pieces of equipment and parts of the installation as determined by the Engineer. The Contractor shall superintend the operations of the equipment during the 30-day period and shall be responsible for the proper operation thereof, and shall make no claim against the City for any damage to the equipment during such operation, or for the services of the above-mentioned representatives or other qualified persons. The Contractor shall make changes, adjustments, or replacements of equipment as may be required to make the equipment comply with the specifications, or to replace any defective parts or material.

END OF SECTION

## SECTION 7 LEGAL RELATIONS AND RESPONSIBILITY

7-1.01	Laws to be Observed
7-1.01A	Labor Code Requirements
7-1.01A(1)	Hours of Labor
7-1.01A(2)	Prevailing Wage
7-1.01A(2)(a)	Travel and Subsistence Payments
7-1.01A(3)	Payroll Records
7-1.01A(4)	Labor Nondiscrimination
7-1.01A(5)	Apprentices
7-1.01A(6)	Worker's Compensation
7-1.01A(7)	Suits to Recover Penalties and Forfeitures
7-1.01B	Blank
7-1.01C	Contractor's Licensing Laws
7-1.01D	Vehicle Code
7-1.01E	Trench Safety
7-1.01F	Air Pollution Control
7-1.01G	Water Pollution
7-1.01H	Use of Pesticides
7-1.01I	Sound Control Requirements
7-1.01J	Assignment of Antitrust Actions
7-1.01K	Time for Giving of Notice
7-1.01L	Compliance with the Underground Notification Systems
7-1.01M	Prohibition of Gifts
7-1.02	Weight Limitations
7-1.03	Payment of Taxes
7-1.04	Permits and Licenses
7-1.05	Patents
7-1.06	Safety and Health Provisions
7-1.07	Blank
7-1.08	Public Convenience
7-1.09	Public Safety
7-1.10	Use of Explosives
7-1.11	Preservation of Property
7-1.12	Responsibility for Damage
7-1.121	Protection of Contractor's Work and Property
7-1.122	Insurance Requirements
7-1.122A	Insurance During Termination and/or Suspension
7-1.125	Legal Actions Against the City
7-1.13	Disposal of Material Outside the Project Limits
7-1.14	Cooperation
7-1.145	Mutual Responsibility of Contractors
7-1.15	Relief from Maintenance and Responsibility
7-1.16	Contractor's Responsibility for the Work and Materials
7-1.165	Damage by Storm, Flood, Tidal Wave or Earthquake
7-1.166	Substantial Completion
7-1.17	Acceptance of Contract

## **SECTION 7**

## **LEGAL RELATIONS AND RESPONSIBILITY**

7-1.18	Property Rights in Materials
7-1.19	Rights in Land and Improvements
7-1.20	Repair of Equipment
7-1.21	Material Plants
7-1.22	Provisions of Law and Venue
7-1.23	Final Guarantee
7-1.24	Legal Address of Contractor
7-1.25	Material Storage
7-1.26	Waiver by the City
7-1.27	Archeological and Paleontological Rights
7-1.28	Emergencies
7-1.29	Integration Clause

## SECTION 7

## LEGAL RELATIONS AND RESPONSIBILITY

**7-1.01 Laws to be Observed.** - The Contractor shall keep fully informed of all existing and future State and Federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Contractor shall at all times observe and comply with, and shall cause all the Contractor's agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work; and shall to the fullest extent allowed by law protect, defend and indemnify the City of San Jose, and all officers, employees, and agents thereof connected with the work, including but not limited to the Engineer, against any claim or liability arising from any work performed under the contract or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or their employees, subcontractors or suppliers at any tier unless such claim or liability arises due to the sole negligence or willful misconduct of the City, its officers, employees or agents. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for the work in relation to any such law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing.

**7-1.01A Labor Code Requirements.** - Attention is directed to the following requirements of the Labor Code:

**7-1.01A(1) Hours of Labor.** - Eight hours labor constitutes a legal day's work. The Contractor shall forfeit, as a penalty to the State, \$50 for each worker employed in the execution of the contract by the Contractor or any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of Contractor in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1-1/2 times the basic rate of pay, as provided in said Section 1815.

**7-1.01A(2) Prevailing Wage.** - The Contractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to said Section 1775 the Contractor shall forfeit to the State a penalty of not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the Contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor in meeting his or her prevailing wage obligations, or a Contractor's willful failure

to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Contractor had knowledge of his or her obligations under the Labor Code. In addition to said penalty and pursuant to said Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.8 of said Code, apprenticeship or other training programs authorized by Section 3093 of said Code, and similar purposes) applicable to the work to be done, for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workers concerned. These wage rates are set forth in the Department of Transportation publication entitled General Prevailing Wage Rates, which is a part of the contract.

The wage rates determined by the Director of Industrial Relations and published in the Department of Transportation publication entitled General Prevailing Wage Rates refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, said published rate of wage shall be in effect for the life of the contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the Department of Industrial Relations, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the contract, each successive predetermined wage rate shall apply to the contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the contract, such wage rate shall apply to the balance of the contract.

Pursuant to Section 1773.2 of the Labor Code, general prevailing wage rates set forth in the Department of Transportation publication entitled General Prevailing Wage Rates, which is a part of the contract shall be posted by the Contractor at a prominent place at the site of the work.

All questions regarding prevailing wages shall be directed to the City's Office of Affirmative Action/Contract Compliance.

The City will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining their bid, and will not under any circumstances be considered as the basis of a claim against the City on the contract.

**7-1.01A(2) (a) Travel and Subsistence Payments.** - Attention is directed to the requirements of Section 1773.8 of the Labor Code. The Contractor shall make travel and subsistence payments to each worker, needed to execute the work, in accordance with the requirements in said Section 1773.8.

**7-1.01A(3) Payroll Records.** - The Contractor's attention is directed to the provisions of Labor Code Section 1776, a portion of which is quoted below. Regulations implementing said Section 1776 are located in Sections 16016 through 16019 and Sections 16207.10 through 16207.19 of Title 8, California Administrative Code. The Contractor shall be responsible for compliance by subcontractors.

- "(a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- "(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:
  - (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
  - (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
  - (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.
- "(c) Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that

- requested the records within 10 days after receipt of a written request.
- "(d) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated.
- "(e) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within 5 working days, provide a notice of a change of location and address.
- "(f) In the event of noncompliance with the requirements of this section, the contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. Should noncompliance still be evident after the 10-day period, the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit 25 dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due."

The penalties specified in subdivision (f) of Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any moneys due or which may become due to the Contractor.

A copy of all payrolls shall be submitted weekly to the Engineer. Payrolls shall contain the full name, address and social security number of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which the employee's name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or their agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the City or on any form with identical wording. The Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. If by the 15th of the month, the Contractor has not submitted satisfactory payrolls for all work performed during the monthly period ending on or before the 1st of that month, the City will retain an amount equal to 10 percent of the estimated value of the work performed (exclusive of Mobilization) during the month from the next



monthly estimate, except that such retention shall not exceed \$10,000 nor be less than \$1,000. Retention for failure to submit satisfactory payrolls shall be additional to all other retention provided for in the contract. The retention for failure to submit payrolls for any monthly period will be released for payment on the monthly estimate for partial payments next following the date that all the satisfactory payrolls for which the retention was made are submitted.

The Contractor and each subcontractor shall preserve their payroll records for a period of 4 years from the date of completion of the contract.

**7-1.01A(4) Labor Nondiscrimination.** - Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

Attention is hereby directed to those provisions of Title II, Chapter 13, Parts 1, 2, and 3 of the San Jose Municipal Code (relating to equal employment opportunity, nondiscrimination in employment, and requirements for affirmative action to insure equal employment opportunity, including requirements for submittal of written affirmative action programs and pre-award approvals of such programs in certain contracts), and to the Affirmative Action Guidelines adopted by resolution of the City Council. Contractor agrees to comply with all of such provisions and guidelines applicable to this contract. The provisions of said Chapter 13 of Title II of the San Jose Municipal Code, said resolutions and said Affirmative Action Guidelines are set forth in full in the special provisions of the specifications.

**7-1.01A(5) Apprentices.** - Attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. To insure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, State of California prior to commencement of work on the public works contract. Responsibility for compliance with this section lies with the Contractor.

It is City policy to encourage the employment and training of apprentices on public works contracts as may be permitted under local apprenticeship standards.

**7-1.01A(6) Workers' Compensation.** - Pursuant to the requirements of Section 1860 of the Labor Code, the Contractor will be required to secure the payment of workers' compensation to the Contractor's employees in accordance with the provisions of Section 3700 of the Labor Code.

Prior to the commencement of work, the Contractor shall sign and file with the Engineer a certification in the following form:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against

liability for workers; compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Said certification is included in the contract, and signature and return of the contract as provided in Section 3-1.03, "Execution of Contract," shall constitute signing and filing of the said certificate.

Before beginning the work, the Contractor shall furnish to the City satisfactory proof that he has taken out, for the period covered by the work under this contract, full compensation insurance for all persons whom the Contractor may employ directly or through subcontractors, in carrying out the work contemplated under this contract, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof. Such insurance shall be maintained in full force and effect during the period covered by this contract.

If the Contractor or subcontractor fail to maintain such insurance, the City may take out compensation insurance which the City might be liable to pay under the provisions of the Act by reason of any employee of the Contractor or subcontractors being injured or killed, and deduct and retain the amount of the premium for such insurance from any sums due to the Contractor.

If any injury occurs to any employee of the Contractor for which the employees, or his dependents in the event of this death, is entitled to compensation from the City under the provisions of said Act, or for which compensation is claimed from the City, the City may retain from the sums due the Contractor under this contract an amount sufficient to cover such compensation, as fixed by said Act, until such compensation is paid, or until it is determined that no compensation is due, and if the City is compelled to pay such compensation, it will deduct and retain from such sums the amount so paid.

**7-1.01A(7) Suits to Recover Penalties and Forfeitures.** - Attention is directed to Sections 1730 to 1733, inclusive, of the Labor Code concerning suits to recover amounts withheld from payment for failure to comply with requirements of the Labor Code or contract provisions based on such laws.

Said sections provide that a suit on the contract for alleged breach thereof in not making the payment is the exclusive remedy of the Contractor or the Contractor's assignees with reference to amounts withheld for such penalties or forfeitures, and that such suit must be commenced and actual notice thereof received by the awarding authority prior to 90 days after completion of the contract and the formal acceptance of the job.

Submission of a claim under Section 9-1.07B, "Final Payment and Claims," for the amounts withheld from payment for such penalties and forfeitures is not a prerequisite for such suits and such claims will not be considered.

#### **7-1.01B (Blank)**

**7-1.01C Contractor's Licensing Laws.** - Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors.

All bidders and contractors shall be licensed in accordance with the laws of this State at the time of bid in the classification set forth in these contract

documents and any bidder or contractor not so licensed is subject to the penalties imposed by such laws and rejection of their bid.

In all City projects where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed at the time of bid in accordance with the laws of this state. At the time a federally funded contract is awarded, the Contractor shall be properly licensed in accordance with the laws of the State of California.

The first payment for work or material under any contract shall not be made by the City unless and until the Registrar of Contractors certifies to the City that the records of the Contractors State License Board indicate that the Contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors State License Board. Failure of the bidder to timely obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract as provided in Section 3-1.04 "Failure to Execute Contract" and shall result in the forfeiture of the security of the bidder.

**7-1.01D Vehicle Code.** - Pursuant to the authority contained in Vehicle Code Section 591, the City has determined that within such areas as are within the limits of the project and are open to public traffic, the following requirements of the Vehicle Code will apply. The lighting requirements in Section 25803; the brake requirements in Chapter 3, Division 12; the splash apron requirements in Section 27600, and, when operated on completed or existing treated base, surfacing, pavement or structures, except as otherwise provided in Section 7-1.02 "Weight Limitations," the weight limitation requirements contained in Division 15.

Attention is directed to the statement in said Section 591 that this section shall not relieve the Contractor or any person from the duty of exercising due care. The Contractor shall take all necessary precautions for safe operation of their equipment and the protection of the public from injury and damage from such equipment.

Any other requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code which the City, pursuant to the authority contained in Vehicle Code Section 591, will require compliance with, will be set forth in the special provisions.

**7-1.01E Trench Safety.** - Attention is directed to the provisions of Section 6705 of the Labor Code concerning trench excavation safety plans.

**7-1.01F Air Pollution Control.** - The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the contract, including any air pollution control rules, regulations, ordinances and statutes.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned, either inside or outside the project right of way.

**7-1.01G Water Pollution.** - The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays, and coastal waters from pollution with fuels, oils, bitumens, calcium chloride and other harmful materials and shall conduct and schedule their operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, bays and coastal waters.

Care shall be exercised to preserve roadside vegetation beyond the limits of construction.

Water pollution control work is intended to provide prevention, control, and abatement of water pollution to streams, waterways, and other bodies of water, and shall consist of constructing those facilities which may be shown on the plans, specified herein or in the special provisions, or directed by the Engineer.

In order to provide effective and continuous control of water pollution, it may be necessary for the Contractor to perform the contract work in small or multiple units, on an out of phase schedule, and with modified construction procedures. The Contractor shall provide temporary water pollution control measures, including but not limited to, dikes, basins, ditches, and applying straw and seed, which become necessary as a result of their operations. The Contractor shall, coordinate water pollution control work with all other work done on the contract.

Before starting any work on the project, the Contractor shall submit, for acceptance by the Engineer, a program to control water pollution effectively during construction of the project. Such program shall show the schedule for the erosion control work included in the contract and for all water pollution control measures which the Contractor proposes to take in connection with construction of the project to minimize the effects of their operations upon adjacent streams and other bodies of water. The Contractor shall not perform any clearing and grubbing or earthwork on the project, other than that specifically authorized in writing by the Engineer, until such program has been accepted.

If the measures being taken by the Contractor are inadequate to control water pollution effectively, the Engineer may direct the Contractor to revise their operations and their water pollution control program. Such directions will be in writing and will specify the items of work for which the Contractor's water pollution control measures are inadequate. No further work shall be performed on said items until the water pollution control measures are adequate and, if also required, a revised water pollution control program has been accepted.

The Engineer will notify the Contractor of the acceptance or rejection of any submitted or revised water pollution control program in not more than 5 working days.

The City will not be liable to the Contractor for failure to accept all or any portion of an originally submitted or revised water pollution control program, nor for any delays to the work due to the Contractor's failure to submit an acceptable water pollution control program.

The Contractor may request the Engineer to waive the requirement for submission of a written program for control of water pollution when the nature of the Contractor's operation is such that erosion is not likely to occur. Waiver of this requirement will not relieve the Contractor from responsibility for compliance with the other provisions of this section. Waiver of the requirement for a written program for control of water pollution will not preclude requiring submittal of a written program at a later time if the Engineer deems it necessary because of the effect of the Contractor's operations.

Unless otherwise approved by the Engineer in writing, the Contractor shall not expose a total area of erodible earth material, which may cause water pollution, exceeding 750,000 square feet for each separate location, operation, or spread of equipment before either temporary or permanent erosion control measures are accomplished.

Where erosion which will cause water pollution is probable due to the nature of the material or the season of the year, the Contractor's operations shall be so scheduled that permanent erosion control features will be installed concurrently with or immediately following grading operations.

Nothing in the terms of the contract nor in the provisions in this Section 7-1.01G shall relieve the Contractor of the responsibility for compliance with Sections 5650 and 12015 of the Fish and Game Code, or other applicable statutes relating to prevention or abatement of water pollution.

When borrow material is obtained from other than commercially operated sources, erosion of the borrow site during and after completion of the work shall not result in water pollution. The material source shall be finished, where practicable, so that water will not collect or stand therein.

The requirements of this section shall apply to all work performed under the contract and to all non-commercially operated borrow or disposal sites used for the project.

The Contractor shall also conform to the following provisions:

1. Where working areas encroach on live streams, barriers adequate to prevent the flow of muddy water into streams shall be constructed and maintained between working areas and streams, and during construction of such barriers, muddying of streams shall be held to a minimum.
2. Removal of material from beneath a flowing stream shall not be commenced until adequate means, such as a bypass channel, are provided to carry the stream free from mud or silt around the removal operations.
3. Should the Contractor's operations require transportation of materials across live streams, such operations shall be conducted without muddying the stream. Mechanized equipment shall not be operated in the stream channels of such live streams except as may be necessary to construct crossings or barriers and fills at channel changes.
4. Water containing mud or silt from aggregate washing or other operations shall be treated by filtration, or retention in a settling pond, or ponds, adequate to prevent muddy water from entering live streams.
5. Oily or greasy substances originating from the Contractor's operations shall not be allowed to enter or be placed where they will later enter a live stream.
6. Portland cement or fresh Portland cement concrete shall not be allowed to enter flowing water of streams.
7. When operations are completed, the flow of streams shall be returned as nearly as possible to a meandering thread without creating possible future bank erosion, and settling pond sites shall be graded so they will drain and will blend in with the surrounding terrain.
8. Material derived from roadway work shall not be deposited in a live stream channel where it could be washed away by high stream flows.

9. Where there is possible migration of anadromous fish in streams affected by construction on the project, the Contractor shall conduct their operations so as to allow free passage of such migratory fish.

Compliance with the requirements of this section shall in no way relieve the Contractor from their responsibility to comply with the other provisions of the contract, in particular the Contractor's responsibility for damage and for preservation of property.

Full compensation for conforming to the requirements of this section shall be considered as included in the prices paid for the various items of work and no additional compensation will be allowed therefor.

**7-1.01H Use of Pesticides.** - The Contractor shall comply with all rules and regulations of the State of California, Department of Food and Agriculture, the State of California, Department of Health, the State of California, Department of Industrial Relations and all other agencies which govern the use of pesticides required in the performance of the work on the contract.

Pesticides shall include but shall not be limited to herbicides, insecticides, fungicides, rodenticides, germicides, nematocides, bactericides, inhibitors, fumigants, defoliants, desiccants, soil sterilants, and repellents.

Any substance or mixture of substances intended for preventing repelling, mitigating, or destroying weeds, insects, diseases, rodents, or nematodes and any substance or mixture of substances intended for use as plant regulator, defoliant or desiccant shall be considered a pesticide.

**7-1.01I Sound Control Requirements.** - The Contractor shall minimize noise and comply with all local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the contract.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler.

**7-1.01J Assignment of Antitrust Actions.** - The Contractor's attention is directed to the following provisions of Government Code Sections 4551, 4553, and 4554 which shall be applicable to the Contractor and subcontractors:

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgement by the parties.

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

**7-1.01K Time for Giving of Notice.** - The terms of Code of Civil Procedure Section 1013 shall not apply to any notices given by City under this contract.

**7-1.01L Compliance with the Underground Notification System.** - To the extent they apply to the Contractor's work, the Contractor shall comply with the requirements of Government Code Sections 4216 through 4216.9, inclusive.

**7-1.01M Prohibition of Gifts.** - Pursuant to Chapter 10.36, Part 5, "Prohibition of Gifts and Certain Contributions" of the City Municipal Code, the Contractor shall be familiar with the City's prohibition against acceptance of any gift by a City officer or designated employee. Said prohibition is found in Chapter 10.36 of the San Jose Municipal Code.

The Contractor agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.

The offer or giving of any gift prohibited by Chapter 10.36 shall constitute a material breach of this contract by Contractor. In addition to any other remedies City may have in law or equity, City may terminate for cause this contract for such breach as provided elsewhere in these General Conditions.

**7-1.02 Weight Limitations.** - Unless expressly permitted in the special provisions, construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limitations set forth in Division 15 of the Vehicle Code, shall not be operated over completed or existing treated bases, surfacing, pavement or structures in any areas within the limits of the project, whether or not such area is subject to weight limitations under Section 7-1.01D, "Vehicle Code," except as hereinafter provided in this Section 7-1.02.

After application of the curing seal, no traffic or Contractor's equipment will be permitted on cement treated base or lean concrete base for a period of 72 hours. After 72 hours, traffic and equipment operated on the base shall be limited to that used in paving operations and placing additional layers of cement treated base. No traffic or Contractor's equipment will be permitted on treated permeable base except for that equipment required to place the permeable base and the subsequent layer of pavement. Trucks used to haul treated base, Portland cement

concrete, or asphalt concrete shall enter onto the base to dump at the nearest practical entry point ahead of spreading equipment. Empty haul trucks shall exit from the base at the nearest practical exit point. Entry and exit points shall not be more than 1,000 feet ahead of spreading equipment except in locations where specifications prohibit operation of trucks outside the area occupied by the base or where steep slopes or other conditions preclude safe operation of hauling equipment. In such locations, entry and exit points shall be established at the nearest point ahead of spreading equipment permitted by specifications and allowing safe operation of hauling equipment. Damage to curing seal or base shall be repaired promptly by the Contractor at the Contractor's expense, as directed by the Engineer.

Within the limits of the project and subject to the control of the Engineer, and provided that the Contractor at the Contractor's expense shall provide such protective measures as are deemed necessary by the Engineer and shall repair any damage caused by such operations, the Contractor will be permitted to:

- (1) Make transverse crossings of such portions of an existing public road or street as are within the highway right of way, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
- (2) Make transverse crossings of treated bases, surfacing, or pavement which are under construction or which have been completed, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
- (3) Cross bridge structures that are not open to public traffic and which are designed for HS20-44 Live Loading (culverts and pipes excluded), with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code, but not exceeding the weight limitations hereinafter specified, provided that the Contractor furnishes to the Engineer the dimensions and maximum axle loadings of equipment proposed for use on bridge structures:
  - (a) The maximum loading on bridge structures due to pneumatic-tired truck and trailer combinations shall not exceed (1) 28,000 pounds for single axles, (2) 48,000 pounds for tandem axles, nor (3) 60,000 pounds total gross load for single vehicles or 110,000 pounds total gross load for truck and trailer or semi-trailer combinations.
  - (b) The loading on bridge structures due to 2 and 3 axle pneumatic-tired earth movers shall not exceed that shown in the following table.



**ALLOWABLE CONSTRUCTION LOADING ON BRIDGES  
FOR 2 AND 3 AXLE EARTH MOVERS**

Spacing of Bridge Girders (center to center in feet)	Maximum Axle Loading (in pounds)
4	28,000
5	29,000
6	30,000
7	32,000
8	34,000
9	37,000
10 and over	40,000

Minimum axle spacing:

For 3-axle earth movers

Axles 1 to 2 = 8 feet

Axles 2 to 3 = 20 feet

For 2-axle earth movers

Axles 1 to 2 = 20 feet

- (4) Move equipment within the limits of the project over completed or existing base, surfacing, pavement, and structures, whether or not open to the public, in accordance with the limitations and conditions established by the Engineer.

Within the limits of the project and subject to the condition that the Contractor shall repair, at the Contractor's expense, any damage caused thereby, the Contractor will be permitted to cross culverts and pipes with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code in accordance with the conditions set forth on the plans. If such conditions are not set forth on the plans, the provisions in the first paragraph in this Section 7-1.02 will apply.

Should the Contractor desire to increase the load carrying capacity of a structure or structures which are to be constructed as a part of the contract, in order to facilitate their own operations, the Contractor may request the Engineer to consider redesigning the structure or structures. Proposals by the Contractor to increase the load carrying capacity of structures above 130,000 pounds per single axle or pair of axles less than 8 feet apart, or above 330,000 pounds total gross vehicle weight, will not be approved. The request shall include a description of the structure or structures involved and a detailed description of the overloads to be carried, the date the revised plans would be required, and a statement that the Contractor agrees to pay all costs involved in the strengthening of the structure or structures, including the cost of revised plans, and further that the Contractor agrees that no extension of time will be allowed by reason of any delay to the work which may be due to the alteration of the structure or structures. If the Engineer determines that strengthening the structure or structures will be permitted, the Engineer will inform the Contractor of the estimated cost of the alterations, including engineering, and the date that revised plans could be furnished. If the cost

and date are satisfactory to the Contractor, the Engineer will prepare a change order providing for the agreed upon alterations and payment to the City.

**7-1.03 Payment of Taxes.** - The contract prices paid for the work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the City, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the contract.

**7-1.04 Permits and Licenses.** - The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work in sufficient time to prevent delays to the work.

The Environmental Quality Act (Public Resources Code, Sections 21000 to 21176, inclusive) may be applicable to permits, licenses and other authorizations which the Contractor must obtain from local agencies in connection with performing the work of the contract. The Contractor shall comply with the provisions of said statutes in obtaining such permits, licenses and other authorizations and they shall be obtained in sufficient time to prevent delays to the work.

In the event that the City has obtained permits, licenses or other authorizations, applicable to the work, the Contractor shall comply with the provisions of said permits, licenses and other authorizations.

**7-1.05 Patents.** - The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work, and agrees to indemnify and hold harmless the City, its employees, duly authorized agents and duly authorized representatives, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices, or processes.

**7-1.06 Safety and Health Provisions.** - The Contractor shall conform to all applicable occupational safety and health standards, rules, regulations and orders established by the Federal Government, State of California, County of Santa Clara and the City of San Jose or any other government agency of competent Jurisdiction.

All working areas utilized by the Contractor to perform work during the hours of darkness, shall be lighted to conform to the minimum illumination intensities established by California Division of Occupational Safety and Health Construction Safety Orders.

All lighting fixtures shall be mounted and directed in a manner precluding glare to approaching traffic.

Full compensation for conforming to the requirements of this section shall be considered as included in the contract prices paid for the various items of work involved and no separate payment will be made therefor.

**7-1.07 (Blank)**

**7-1.08 Public Convenience.** - This Section 7-1.08 defines the Contractor's responsibility with regard to convenience of the public and public traffic in connection with the Contractor's operations.

Attention is directed to Section 4-1.04, "Detours," for provisions relating to the passage of traffic around the work over detours.

Attention is directed to Section 7-1.09, "Public Safety," for provisions relating to the Contractor's responsibility for the safety of the public. The requirements in said Section 7-1.09 are in addition to the requirements of this Section 7-1.08 and the Contractor will not be relieved of any responsibilities as set forth in said Section 7-1.09 by reason of conformance with any of the provisions in this Section 7-1.08.

Attention is directed to Section 12, "Construction Area Traffic Control Devices," for requirements concerning flagging and traffic-handling equipment and devices used in carrying out the provisions of this Section 7-1.08 and said Section 7-1.09.

In the event of a suspension of the work, attention is directed to Section 8-1.05, "Temporary Suspension of Work."

The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public.

Unless otherwise provided in the special provisions, all public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible. Where possible, such traffic shall be routed on new or existing paved surfaces.

Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense.

Existing traffic signals and highway lighting shall be kept in operation for the benefit of the traveling public during progress of the work, and other forces will continue routine maintenance of existing systems.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

Convenient access to driveways, houses, and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

The Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Engineer will determine which signs shall be covered. Except as otherwise provided for construction area signs in Section 12, "Construction Area Traffic Control Devices," furnishing, installing and removing covers will be paid for as extra work as provided in Section 4-1.03D.

Excavation and the construction of embankments shall be conducted in such manner as to provide a reasonably smooth and even surface satisfactory for use by public traffic at all times; sufficient fill at culverts and bridges to permit traffic to cross shall be placed in advance of other grading operations, and if ordered by the Engineer roadway cuts shall be excavated in lifts and embankments constructed part width at a time, construction being alternated from one side to the

other and traffic routed over the side opposite the one under construction. Culvert installation or culvert construction shall be conducted on but one-half the width of the traveled way at a time and that portion of the traveled way being used by public traffic shall be kept open and unobstructed until the opposite side of the traveled way is ready for use by traffic.

Upon completion of rough grading at the grading plane, or placing any subsequent layer thereon, the surface of the roadbed shall be brought to a smooth, even condition free of humps and depressions, satisfactory for the use of public traffic.

After the surface of the roadbed has been brought to a smooth and even condition for the passage of public traffic as above provided, any work ordered by the Engineer for the accommodation of public traffic prior to commencing subgrade operations will be paid for as extra work as provided in Section 4-1.03D. After subgrade preparation for a specified layer of material has been completed, the Contractor shall, at the Contractor's expense, repair any damage to the roadbed or completed subgrade, including damage caused by the Contractor's operations or use by public traffic.

While subgrade and paving operations are underway, public traffic shall be permitted to use the shoulders and, if half-width paving methods are used, shall also be permitted to use the side of the roadbed opposite the one under construction. When sufficient width is available, a passageway wide enough to accommodate at least 2 lanes of traffic shall be kept open at locations where subgrade and paving operations are in active progress.

Any shaping of shoulders or reshaping of subgrade necessary for the accommodation of public traffic thereon during subgrade preparation and paving operations will be paid for as extra work as provided in Section 4-1.03D.

When ordered by the Engineer, the Contractor shall furnish a pilot car and driver and flaggers for the purpose of expediting the passage of public traffic through the work under one-way controls, and the cost thereof will be paid for as extra work as provided in Section 4-1.03D, except that the cost of flaggers furnished for this purpose will be paid for as provided in Section 12-2.02, "Flagging Costs." At locations where traffic is being routed through construction under one-way controls and when ordered by the Engineer, the movement of the Contractor's equipment from one portion of the work to another shall be governed in accordance with such one-way controls.

Water or dust palliative shall be applied if ordered by the Engineer for the alleviation or prevention of dust nuisance as provided in Section 10, "Dust Control."

In order to expedite the passage of public traffic through or around the work and where ordered by the Engineer, the Contractor shall install signs, lights, flares, temporary railing (Type K), barricades, and other facilities for the sole convenience and direction of public traffic. Also where directed by the Engineer, the Contractor shall furnish competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the work. The cost of furnishing and installing such signs, lights, flares, temporary railing (Type K), barricades, and other facilities, not to be paid for as separate contract items, will be paid for as extra work as provided in Section 4-1.03D.

The cost of furnishing flaggers for the sole convenience and direction of public traffic will be paid for as provided in Section 12-2.02, "Flagging Costs."

The Contractor will be required to pay the cost of replacing or repairing all facilities installed under extra work for the convenience or direction or warning of public traffic that are lost while in the Contractor's custody, or are damaged by

reason of the Contractor's operations to such an extent as to require replacement or repair, and deductions from any moneys due or to become due the Contractor will be made to cover such cost.

Whenever a section of surfacing, pavement, or the deck of a structure has been completed, the Contractor shall open it to use by public traffic if the Engineer so orders or may open it to use by public traffic if the Engineer so consents. In either case, the Contractor will not be allowed any compensation due to any delay, hindrance, or inconvenience to the Contractor's operations caused by such public traffic, but will thereupon be relieved of responsibility for damage to completed permanent facilities caused by public traffic, within the limits of such use. The Contractor will not be relieved of any other responsibility under the contract nor will the Contractor be relieved of cleanup and finishing operations.

Except as otherwise provided in this Section 7-1.08 or in the special provisions, full compensation for conforming to the requirements in this Section 7-1.08 and in the special provisions shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

**7-1.09 Public Safety.** - It is the Contractor's responsibility to provide for the safety of traffic and the public during construction.

Attention is directed to Section 7-1.12, "Responsibility for Damage."

Attention is directed to Section 7-1.08, "Public Convenience," for provisions relating to the Contractor's responsibility for providing for the convenience of the public in connection with the Contractor's operations.

Attention is directed to Section 12, "Construction Area Traffic Control Devices," for requirements concerning flagging and traffic-handling equipment and devices used in carrying out the provisions of said Section 7-1.08 and this Section 7-1.09.

Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's expense and without cost to the City, furnish, erect and maintain such fences, temporary railing (Type K), barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public.

Such fences, temporary railing (Type K), barricades, lights, signs, and other devices furnished, erected and maintained by the Contractor, at the Contractor's expense, are in addition to any construction area traffic control devices for which payment is provided for elsewhere in the specifications.

The Contractor shall also furnish such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered and payment therefor will be made as provided in Section 12-2.02, "Flagging Costs."

Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements set forth in the current Caltrans Manual of Traffic Controls. Signs or other protective devices furnished and erected by the Contractor at the Contractor's expense, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices for which furnishing of, or payment for, is provided elsewhere in the specifications. Signs furnished and erected by the Contractor at the Contractor's expense shall be approved by the Engineer as to size, wording and location.

The installation of general roadway illumination shall not relieve the Contractor of any responsibility for furnishing and maintaining any of the protective facilities hereinbefore specified.

Construction equipment shall enter and leave the highway via existing ramps and crossovers and shall move in the direction of public traffic. All movements of workers and construction equipment on or across lanes open to public traffic shall be performed in a manner that will not endanger public traffic.

The Contractor's trucks or other mobile equipment which leave a freeway lane, that is open to public traffic, to enter the construction area, shall slow down gradually in advance of the location of the turnoff to give following public traffic an opportunity to slow down.

When leaving a work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

Lanes, ramps, and shoulders shall be closed in accordance with the details shown on the plans, the provisions of Section 12, "Construction Area Traffic Control Devices," and as provided in the special provisions.

Pedestrian openings through falsework shall be paved or provided with full width continuous wood walks and shall be kept clear. Pedestrians shall be protected from falling objects and curing water for concrete. Overhead protection for pedestrians shall extend not less than 4 feet beyond the edge of the bridge deck. All pedestrian openings through falsework shall be illuminated in accordance with the provisions in Caltrans Section 86-6.11, "Falsework Lighting."

The Contractor shall notify the Engineer not less than 15 days before the anticipated start of each falsework and girder erection operation whenever such falsework or girders will reduce clearances available to public traffic.

Where the height of vehicular openings through falsework is less than 15 feet, a W34B "Vertical Clearance" sign shall be provided above each opening facing approaching traffic. The signs shall have black letters and numbers on an orange reflectorized background and shall be illuminated so that said signs are clearly visible. The minimum height of the letters and numbers shall be 6 inches and 10 inches, respectively.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.

Temporary facilities which the Contractor uses to perform the work shall not be installed or placed where they will interfere with the free and safe passage of public traffic.

Temporary facilities which could be a hazard to public safety if improperly designed shall comply with design requirements specified in the contract for such facilities or, if none are specified, with standard design criteria or codes appropriate for the facility involved. Working drawings and design calculations for such temporary facilities shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California and shall be submitted to the Engineer for review pursuant to Section 5-1.02, "Plans and Working Drawings." Such submittal shall designate thereon the standard design criteria or codes used. Installation of such temporary facilities shall not start until the Engineer has reviewed the drawings.

Provision for the payment for signs, lights, flares, temporary railing (Type K), barricades, and other facilities by extra work as provided in Section 7-1.08, "Public Convenience," or by contract item as provided in Section 12, "Construction Area Traffic Control Devices," shall in nowise relieve the Contractor from any responsibility as provided in this Section 7-1.09.

Except as otherwise provided in this Section 7-1.09 or in the special provisions, full compensation for conforming to all of the provisions in this Section 7-1.09 and in the special provisions shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

Should the Contractor be negligent or fail to furnish and/or maintaining warning and protective facilities as required herein, the City may furnish and/or maintain such facilities and charge Contractor therefor by deducting the cost thereof from periodic progress payments due the Contractor as such costs are incurred by City.

In the event the Contractor does not provide such flaggers and guards as are required by this section, the Director may request that the San Jose Police Department provide for public safety and that the costs related thereto shall be deducted from any periodic progress payments due the Contractor.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the right-of-way open for use by public traffic.

**7-1.10 Use of Explosives.** - The use of explosives is expressly prohibited unless specifically provided for in the special provisions.

**7-1.11 Preservation of Property.** - Attention is directed to Section 7-1.12, "Responsibility for Damage," and to Section 8-1.10, "Utility and Non-Highway Facilities." Due care shall be exercised to avoid injury to existing highway improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs, and other plants that are not to be removed.

Roadside trees, shrubs, and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all highway facilities, and any other improvements or facilities within or adjacent to the highway shall be protected from injury or damage, and if ordered by the Engineer, the Contractor shall provide and install suitable safeguards, approved by the Engineer, to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work, or as good as required by the specifications accompanying the contract, if any such objects are a part of the work being performed under the contract. The Engineer may make or cause to be made such temporary repairs as are necessary to restore to service any damaged highway facility. The cost of such repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the contract.

The fact that any underground facility is not shown upon the plans shall not relieve the Contractor of any responsibility under Section 8-1.10, "Utility and Non-Highway Facilities." It shall be the Contractor's responsibility, pursuant thereto, to ascertain the location of such underground improvements or facilities which may be subject to damage by reason of the Contractor's operations.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in protecting or repairing property as specified in this Section 7-1.11, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

**7-1.12 Responsibility for Damage.** - The City and all agents, officers and employees thereof including but not limited to the Engineer, shall not be answerable or accountable in any manner: for any loss or damage that may happen to the work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the work; for injury to or death of any person, either workers or the public, or for damage to property from any cause which might have been prevented by the Contractor, or the workers, or anyone employed by the Contractor.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person including but not limited to workers and the public, or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance.

The Contractor shall protect, indemnify, defend and hold harmless the City and all agents, officers and employees thereof including but not limited to the Engineer, from all claims, suits or actions of every name, kind and description including attorney's fees, brought forth, or on account of, injuries to or death of any person including but not limited to workers and the public, or damage to property resulting from the performance of a contract, except as otherwise provided by statute the State of California. The duty of the Contractor to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code.

With respect to third party claims against the Contractor, the Contractor waives any and all rights to any type of express or implied indemnity against the City, its agents, officers or employees.

It is the intent of the parties that the Contractor will indemnify and hold harmless the City, its agents, officers and employees from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence on the part of the City, the Contractor, the subcontractor or subcontractor at any tier or employee of any of these, other than the sole negligence or willful conduct of the City, its agents, officers and employees.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the contract as shall be considered necessary by the City may be retained by the City until disposition has been made of such suits or claims for damages as aforesaid.

The retention of money due the Contractor shall be subject to the following:

1. The City will give the Contractor 30 days notice of its intention to retain funds from any partial payment which



- may become due to the Contractor prior to acceptance of the contract. Retention of funds from any payment made after acceptance of the contract may be made without such prior notice to the Contractor.
2. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments pursuant to Section 9-1.06, "Partial Payments."
  3. If the City has retained funds and it is subsequently determined that the City is not entitled to be indemnified and hold harmless by the Contractor in connection with the matter for which such retention was made, the City shall pay interest on the amount retained at the same rate as that received by the City on such funds for the period of such retention.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person including but not limited to workers and the public, or damage to property. Contractor shall indemnify and hold harmless any county, city or district, their officers and employees connected with the work, within the limits of which county, city or district the work is being performed hereunder, all in the same manner and to the same extent as provided above for the protection of the City and all officers and employees thereof connected with the work.

Nothing in this contract is intended to make the public or any member thereof a third party beneficiary hereunder, nor is any term and condition or other provision of the contract intended to establish a standard of care owed to the public or any member thereof.

**7-1.121 Protection of Contractor's Work and Property.** - The Contractor shall protect their work, supplies and materials from damage due to the nature of the work, the action of the elements, trespassers, or any cause whatsoever which is under the Contractor's control, until the completion and acceptance of the work. Neither the City nor any of its agents assumes any responsibility for collecting indemnity from any person or persons causing damage to the work of the Contractor.

**7-1.122 Insurance Requirements.** - Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property as set forth in the Special Provisions which may arise from or in connection with the performance of the work hereunder by the Contractor, the Contractor's agents, representatives, employees or subcontractors, including work performed pursuant to Section 8-1.05, "Temporary Suspension of Work." The cost of such insurance shall be included in the Contractor's bid.

**7-1.122A Insurance During Termination and/or Suspension.** - If the City elects to suspend the contract work as provided for in these Specifications, it shall be the Contractor's obligation to keep all insurance policies required under the contract documents in place and effective during the period of such suspension.

If the City should elect to terminate the contract, it shall be the Contractor's obligation to keep all insurance required under the contract documents in place and in effect until the acceptance of the project by the Engineer.

**7-1.125 Legal Actions Against the City.** - In the event litigation is brought against the City concerning compliance by the City with State, Federal, regional, or local laws, ordinances, rules or regulations applicable to the work, the provisions of this Section 7-1.125 shall apply.

- (A) If, pursuant to court order, the City prohibits the Contractor from performing all or any portion of the work, the delay will be considered a right of way delay within the meaning of Section 8-1.09, "Right of Way Delays," unless the contract is terminated as hereinafter provided.
- (B) If, pursuant to court order (other than an order to show cause) the City is prohibited from requiring the Contractor to perform all or any portion of the work, the City may, if it so elects, eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the contract.
- (C) If the final judgment in an action prohibits the City from requiring the Contractor to perform all or any portion of the work, the City will either eliminate the enjoined work pursuant to Section 4-1.03, "Changes," or terminate the contract.
- (D) If the contract is to be terminated, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of Section 8-1.11, "Termination of Contract."
- (E) If any legal action is filed involving the project, the City may, in its sole discretion, elect to terminate the contract for convenience or suspend the contract, as provided elsewhere in these Specifications. This right to terminate and/or suspend the contract work shall include but not be limited to an action brought under the California Environmental Quality Act (CEQA).

**7-1.13 Disposal of Material Outside the Project Limits.** - If the Contractor elects to dispose of materials at locations other than those where arrangements have been made by the City, or, if material is to be disposed of and the City has not made arrangements for disposal of such material, the Contractor shall make arrangements for disposing of materials outside the project limits and the Contractor shall pay all costs involved. Arrangements shall include, but not be limited to, entering into agreements with property owners and obtaining necessary permits, licenses and environmental clearances. Before disposing of any material outside the project limits, the Contractor shall furnish to the Engineer satisfactory evidence that the Contractor has entered into agreements with the property owners of the site involved and has obtained said permits, licenses and clearances.

When any material is to be disposed of outside the project right of way, and the City has not made arrangements for disposal of such material, the

Contractor shall first obtain written authorization from the property owner on whose property the disposal is to be made and the Contractor shall file with the Engineer said authorization or a certified copy thereof together with a written release from the property owner absolving the City from any and all responsibility in connection with the disposal of material on said property, and before any material is disposed of on said property, the Contractor shall obtain written permission from the Engineer to dispose of the material at the location designated in said authorization.

When material is disposed of as above provided and the disposal location is visible from a highway, the Contractor shall dispose of the material in a neat and uniform manner to the satisfaction of the Engineer.

Where the City has made arrangements with owners of land in the vicinity of a project for the disposal of materials on an owner's property, such arrangements are made solely for the purpose of providing all bidders an equal opportunity to dispose of said materials on such property. Bidders or Contractors may, upon written request, inspect the documents evidencing such arrangements between property owners and the City. If the Contractor so elects, exercise any rights that have been obtained, which may be exercised by a Contractor under such arrangements, subject to and upon the conditions hereinafter set forth.

Such arrangements are not a part of the contract and it is expressly understood and agreed that the City assumes no responsibility to the bidder or Contractor whatsoever in respect to the arrangements made with the property owner to dispose of materials thereon and that the Contractor shall assume all risks in connection with the use of such property, the terms upon which such use shall be made, and there is no warranty or guaranty, either express or implied, as to the quantity or types of materials that can be disposed of on such property.

In those instances in which the Department has compiled "Materials Information" as referred to in Section 2-1.03, "Examination of Plans, Specifications, Contract, and Site of Work," said compilation will include the documents setting forth the arrangement made with some of the property owners for the disposal of material on such owners' properties. The inclusion of such documents therein shall not in any respect operate as a waiver of any of the provisions in this Section 7-1.13 concerning said documents.

The bidder or Contractor is cautioned to make such independent investigation and examination as they deem necessary to satisfy themselves as to the quantity and types of materials which may be disposed of on such property and the rights, duties and obligations acquired or undertaken under such arrangement with the property owner.

Notwithstanding that the Contractor may elect to dispose of materials on any such property owner's property, no material may be disposed of on such property unless the Contractor has first either:

- (1) Executed a document that will guarantee to hold such owner harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises and also agree to conform to all other provisions set forth in the arrangement made between the City and the property owner. Said document will be prepared by the Engineer for execution by the Contractor, or
- (2) Entered into an agreement with the owner of the disposal site on any terms mutually agreeable to the

owner and the Contractor; provided that the Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the owner, relieving the City of any and all obligations under the City's arrangement with the owner.

If the Contractor elects to dispose of material under (1), the use of such site shall be subject to the terms, conditions and limitations of the arrangement made between the property owner and the City and the Contractor shall pay such charges as are provided for in the arrangement made by the City with the property owner, and deductions will be made from any moneys due or that may become due the Contractor under the contract sufficient to cover the charges for such material disposed of.

If the Contractor elects to dispose of material under (2), the Contractor shall pay such charges as are provided for in the agreement between the owner and the Contractor and deductions will not be made from any moneys due or that may become due the Contractor under the contract to cover such charges.

Before acceptance of the contract, the Engineer may require the Contractor to submit written evidence that the owner of the disposal site is satisfied that the Contractor has satisfactorily complied with the provisions of either - (1), the arrangement between the City and the owner, or (2), the agreement between the owner and the Contractor, as the case may be.

Full compensation for all costs involved in disposing of materials as specified in this Section 7-1.13, including all costs of hauling, shall be considered as included in the price paid for the contract item of work involving such materials and no additional compensation will be allowed therefor.

**7-1.14 Cooperation.** - Should construction be under way by other forces or by other contractors within or adjacent to the limits of the work specified or should work of any other nature be under way by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

When 2 or more contractors are employed on related or adjacent work, or obtain materials from the same material source, as provided in Section 6-2.02, "Possible Local Material Sources," or Section 6-2.03 "Mandatory Local Material Sources," each contractor shall conduct their operations in such a manner as not to cause any unnecessary delay or hindrance to the other.

Each contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by his/her operations, and for loss caused the other due to his/her unnecessary delays or failure to finish the work within the time specified for completion. The Contractor shall conduct, adjust, correct and coordinate their work with the work of others so that no discrepancies shall result in the whole work and shall defend, indemnify and hold the City harmless against any claims arising therefrom. The Contractor, including sub-contractors at any tier, shall keep informed of the progress and the detail work of other contractors and shall notify the Engineer immediately of lack of progress or defective workmanship on the part of other contractors, where such delay or such defective workmanship will interfere with the Contractor's own operations. Failure of a Contractor to keep informed of the work progressing on the site and failure to give notice of lack of

progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with the Contractor's work. If the work of the Contractor is delayed because of any acts or omissions of any other contractor, the Contractor shall on that account have no claim against the City other than for an extension of time.

**7-1.145 Mutual Responsibility of Contractors.** - If the Contractor or any of their subcontractors or employees cause loss or damage to any other contractor, and if such other contractor makes a claim against the City, its employees or agents, on account of any loss so sustained, the City shall notify the Contractor, who shall defend, indemnify and save harmless the City, its employees and agents against any such claim, expense or judgement arising therefrom.

**7-1.15 Relief From Maintenance and Responsibility.** - Upon the request of the Contractor, the Engineer may relieve the Contractor of the duty of maintaining and protecting certain portions of the work as described below, which have been completed in all respects in accordance with the requirements of the contract and to the satisfaction of the Engineer and of which City has taken occupancy or use, and thereafter except with the Engineer's consent, the Contractor will not be required to do further work thereon. In addition, such action by the Engineer will relieve the Contractor of responsibility for injury or damage to said completed portions of the work resulting from use by public traffic or from the action of the elements or from any other cause but not from injury or damage resulting from the Contractor's own operations or from the Contractor's negligence. Portions of the work for which the Contractor may be relieved of the duty of maintenance and protection as provided in the above paragraph include but are not limited to the following:

- (1) The completion of one-quarter mile of roadway or one-quarter mile of one roadway of a divided highway or a frontage road including the traveled way, shoulders, drainage control facilities, planned roadway protection work, lighting and any required traffic control and access facilities.
- (2) A bridge or other structure of major importance.
- (3) A complete unit of a traffic control signal system or of lighting system.
- (4) Facilities constructed for other agencies.
- (5) Storm or sanitary sewer facilities as designated by the Engineer.

However, nothing in this Section 7-1.15 providing for relief from maintenance and responsibility will be construed as relieving the Contractor of full responsibility for making good defective work or materials found at any time before or after the formal written acceptance of the entire contract by the Engineer.

If the Contractor is relieved of maintenance and responsibility of a portion of the work performed under this contract and the City takes occupancy or use of that portion of the work, the Contractor hereby agrees to provide reasonable access to the City's maintenance forces to properly maintain those areas occupied by the City.

**7-1.16 Contractor's Responsibility for the Work and Materials.** - Until the acceptance of the contract, the Contractor shall have the charge and care of the work and of the materials to be used therein (including materials for which the Contractor has received partial payment as provided in Section 9-1.06, "Partial Payments," or materials which have been furnished by the City and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work, except as provided in Sections 7-1.08, "Public Convenience," and 7-1.15, "Relief From Maintenance and Responsibility." The Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the work or the materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof, except as otherwise expressly provided in Section 7-1.165, "Damage by Storm, Flood, Tidal Wave or Earthquake," and in Caltrans Section 19-2.04, "Slides and Slipouts," and except for such injuries, losses, or damages as are directly and proximately caused by acts of the Federal, State, regional, or local Government or the public enemy. Where necessary to protect the work or materials from damage, the Contractor shall, at the Contractor's expense, provide suitable drainage of the work area and erect such temporary structures as are necessary to protect the work or materials from damage. The suspension of the work from any cause whatever shall not relieve the Contractor of any responsibility for the work and materials as herein specified. If ordered by the Engineer, the Contractor shall, at the Contractor's expense, properly store materials which have been furnished by the City. Such storage by the Contractor shall be on behalf of the City and the City shall at all times be entitled to the possession of such materials, and the Contractor shall promptly return the same to the site of the work when requested. The Contractor shall not dispose of any of the materials so stored except on written authorization from the Engineer.

The City reserves the right to use or occupy any portion or all of the work prior to completion. Upon occupying or commencing use of any such portion or all of the work prior to completion, the Contractor shall not be relieved of any duty for maintaining and protecting said work and the Contractor shall be required thereafter to complete said work. The Contractor shall be fully responsible for coordinating with the City for the completion of such work such that said work will cause the least interference with the City's use and/or occupancy.

**7-1.165 Damage by Storm, Flood, Tidal Wave or Earthquake.** - Attention is directed to Section 7-1.16, "Contractor's Responsibility for the Work and Materials." In the event damage to the work is caused by a storm, flood, tidal wave or earthquake which constitutes an "Occurrence," as hereinafter defined, the provisions of this Section 7-1.165 shall be applicable and the Contractor may apply in writing to the Engineer for the City to pay or participate in the cost of repairing damage to the work from such cause or, in lieu thereof, and at the sole discretion of the City, terminate the contract and relieve the Contractor of further obligation to perform the work, subject to the following:

- A. Occurrence. "Occurrence" shall include tidal waves, earthquakes in excess of a magnitude of 3.5 on the Richter Scale, and storms and floods as to which the Governor has proclaimed a state of emergency when the damaged work is located within the territorial limits to which such proclamation is applicable or, which were,

in the opinion of the Engineer, of a magnitude at the site of the work sufficient to have caused such a proclamation had they occurred in a populated area or in an area in which such a proclamation was not already in effect.

- B. Application by Contractor. The Contractor's written request for the City to pay or to participate in the cost of rebuilding, repairing, restoring or otherwise remedying the damage to the work caused by the Occurrence shall be submitted to the Engineer before performing any work other than emergency work, including emergency work necessary to provide for passage of public traffic.
- C. Protecting the Work from Damage. Nothing in this section shall be construed to relieve the Contractor of any responsibility to protect the work from damage. The Contractor shall bear the entire cost of repairing damage to the work caused by the Occurrence which the Engineer determines was due to the failure of the Contractor to comply with the requirements of the Plans and Specifications, take reasonable and adequate measures to protect the work or exercise sound engineering and construction practices in the conduct of the work, and such repair costs shall be excluded from consideration under the provisions of this section.
- D. Repair Work. Repair of damaged work under the provisions of this section shall be pursuant to a contract change order issued hereunder and specifying the repair work to be performed on the damaged facility. Such repair work shall consist of restoring the in-place construction (for the purposes of this section erected falsework and formwork shall be considered in-place construction) to the same state of completion to which such work had advanced prior to the Occurrence. Emergency work which the Engineer determines would have been part of the repair work if it had not previously been performed, will be considered to be part of said repair work.

The City reserves the right to make changes in the plans and specifications applicable to the portions of the work to be repaired, and if such changes will increase the cost of repairing the damage over the Engineer's estimate of the cost of repair without the changes, the Contractor will be paid for such increased costs in accordance with Subsection E and the increased cost amount shall not be considered in determining the cost of repair to be borne by the Contractor under Subsection F.

Nothing in this section shall be construed to relieve the Contractor of full responsibility for the risk of injury, loss or damage to materials not yet incorporated in the work and to materials, tools and

equipment (except erected falsework and formwork) used to perform the work, or to relieve the Contractor of any responsibility under Section 7-1.12, "Responsibility for Damage." The provisions of this section shall not be applicable to the repair of damage caused by an Occurrence to any portion of the work as to which the Contractor has been granted relief from maintenance and responsibility pursuant to Section 7-1.15, "Relief From Maintenance and Responsibility," or to the removal of slides and slipouts or the repair and restoration of damage to the work resulting from slides and slipouts pursuant to Caltrans Section 19-2.04, "Slides and Slipouts."

- E. **Determination of Costs.** Unless otherwise agreed between the Engineer and the Contractor, the cost of the work performed pursuant to this Section 7-1.165 will be determined in accordance with the provisions in Section 9-1.03, "Force Account Payment," except there shall be no markup allowance pursuant to Section 9-1.03A, "Work Performed by Contractor," unless the Occurrence that caused the damage was a tidal wave or earthquake. The cost of emergency work, which the Engineer determines would have been part of the repair work if it had not previously been performed, will be determined in the same manner as the authorized repair work. The cost of repairing damaged work which was not in compliance with the requirements of the plans and specifications shall be borne solely by the Contractor, and such costs shall not be considered in determining the cost of repair under this Subsection E.
- F. **Payment for Repair Work.** When the Occurrence that caused the damage was a tidal wave or earthquake, the City will pay the cost of repair determined as provided in Subsection E, that exceeds 5 percent of the amount of the Contractor's bid for bid comparison purposes.

When the Occurrence that caused the damage was a storm or flood, the City will participate in the cost of the repair determined as provided in Subsection E in accordance with the following:

1. On projects for which the amount of the Contractor's bid for bid comparison purposes is \$2,000,000 or less, the City will pay 90 percent of the cost of repair that exceeds 5 percent of the amount of the Contractor's bid for bid comparison purposes.
2. On projects for which the Contractor's bid for bid comparison purposes is greater than \$2,000,000, the City will pay 90 percent of the cost of repair that exceeds \$100,000.



- G. **Termination of Contract.** If the City elects to terminate the contract, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of Section 8-1.11, "Termination of Contract."

**7-1.166 Substantial Completion.** - When the Contractor considers the work or a designated portion thereof substantially complete as defined in Section 1-1.425, "Substantial Completion," the Engineer shall prepare for the Contractor a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with the contract documents. When the Engineer determines that the work or designated portion thereof is substantially complete, the Engineer will then prepare a Certificate of Substantial Completion which shall state the responsibilities of the City and the Contractor for security, maintenance, heat, utilities, damage to the work and insurance. The Certificate of Substantial Completion of the work shall be submitted to the City and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate. The Contractor shall obtain and submit to the City, prior to the date of Substantial Completion, all necessary permits for occupancy or the date of Substantial Completion shall be deemed postponed until the City receives these permits. If desired by the City, portions of the work, as completed, may be placed in service. The Contractor shall give proper access to the work for this purpose. Such use and operation shall not constitute an acceptance of the work or that portion placed in service. Contractor shall be liable for defects due to faulty construction.

Upon issuance of the Certificate of Substantial Completion of the work or designated portion thereof, and upon application by the Contractor, and certification by the Engineer, the City shall make payment, reflecting adjustment in retainage, if any, for such work or portion thereof as provided in the contract.

Liquidated damages shall continue to accrue until the filing of the Notice of Acceptance, unless otherwise stated in the Certificate of Substantial Completion. Warranties shall begin to run upon filing of the Notice of Acceptance unless otherwise stated in the Certificate of Substantial Completion.

**7-1.17 Acceptance of Contract.** - When the Engineer has made the final inspection as provided in Section 5-1.13, "Final Inspection," and determines that the contract work has been completed in all respects and in its entirety in accordance with the plans and specifications, the Engineer will formally accept the contract, and immediately upon and after such acceptance by the Engineer, and recordation of the Notice of Completion and Acceptance by the County Recorder's Office, the Contractor will be relieved of the duty of maintaining and protecting the work as a whole, and except for warranty and punch list work, the Contractor will not be required to perform any further work thereon, and the Contractor shall be relieved of responsibility for injury to persons or property or damage to the work which occurs after the formal acceptance by the Engineer.

**7-1.18 Property Rights in Materials.** - Nothing in the contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been installed for their intended use. All such materials shall become the property of the City upon being so attached or affixed.

**7-1.19 Rights in Land and Improvements.** - Nothing in these specifications shall be construed as allowing the Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the contract for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the City and any owner, former owner, or tenant of such land, structure, or building.

The Contractor shall not occupy City-owned property outside the right of way as shown on the plans or outside the expressly designated areas in the contract documents unless the Contractor enters into a rental agreement with the City. The agreement will be based on the fair rental values.

**7-1.20 Repair of Equipment.** - The work of installing, assembling, repairing or reconditioning, or other work of any nature on machinery, equipment, or tools used in or upon the work shall be considered a part of the work to be performed under the contract and any laborers, workers, or mechanics working on such machinery, equipment, or tools, unless employed by bona fide commercial repair shops, garages, blacksmith shops, or machine shops, which have been established and operating on a commercial basis for a period of at least 2 months prior to the award of the contract, shall be subject to all the requirements relating to labor set forth in these specifications and in the special provisions.

**7-1.21 Material Plants.** - The construction, erection, and operation of material production, proportioning, or mixing plants from which material is used wholly on the contract or on contracts under the supervision of the City shall be considered a part of the work to be performed under the contract and any laborers, workers, or mechanics working on such plants shall be subject to all of the requirements relating to labor set forth in these specifications and in the special provisions.

**7-1.22 Provisions of Law and Venue.** - It is specifically provided that this contract is to be interpreted pursuant to California Law and subject to all the provisions of law regulating and controlling the performance of work for the City, and that the rules of law shall prevail over any provision contained in any of the contract documents which may be in conflict or inconsistent therewith.

Each and every provision of law and clause required by law to be inserted in these contract documents shall be deemed to be inserted herein and the contract documents shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provisions is not inserted, or is not correctly inserted, then upon application of either party, the contract documents shall forthwith be physically amended to make such insertion or correction at no additional cost to City.

The parties to this Contract hereby expressly agree that any contrary provisions of this contract notwithstanding, any action to interpret the terms of the Contract or resolve any dispute arising under this Contract by the Contractor, subcontractors at any tier, and material suppliers at any tier, shall be filed exclusively in the State Court of Santa Clara County or where otherwise appropriate in the Federal District Court for the Northern District of California located in San Jose, California, having proper jurisdiction. There is no express or implied agreement between the parties to mediate and/or arbitrate in any forum any matter arising under this Contract.

The Contractor is hereby advised that these contract documents, including the Contractor's Proposal, are subject to the California State Public Records Act and become documents available to the general public.

In the event that a particular City public work contract is funded or required to be approved in whole or in part by the state or federal government and any provision contained herein is inconsistent with any applicable state or federal statutes, rules or regulations, orders or controlling policies pertaining to such funding or approval, such provisions to the extent that it is inconsistent shall not apply to said City public works contract.

**7-1.23 Final Guarantee.** - Unless otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final acceptance of the contract.

If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which, in the opinion of the Engineer, is rendered necessary as the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contract, the Contractor shall, promptly upon receipt of notice from the Engineer, and without expense to the City, (1) place in satisfactory condition in every particular all of such guaranteed work, correcting all defects therein; (2) make good all damage to the structure, site or work, or equipment or contents thereof, which, in the opinion of the Engineer, is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contract; and (3) make good any work or material, or the equipment and contents of said structures, site or work disturbed in fulfilling any such guarantee. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the City may have the defects corrected and the Contractor and the Contractor's surety shall be liable for all expense incurred.

**7-1.24 Legal Address of Contractor.** - Both the address given in the proposal and the Contractor's office in the vicinity of the work are hereby designated as places to either of which drawings, samples, notices, letters or other articles or communications to the Contractor may be mailed or delivered. The delivery at either of these places of any such thing from the City or its agents to the Contractor shall be deemed sufficient service thereof upon the Contractor, and the date of such service shall be the date of such delivery. The address set forth in the proposal may be changed at any time by notice in writing from the Contractor to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any drawings, sample, notice, letter or other article or communication to or upon the Contractor personally.

**7-1.25 Material Storage.** - The Contractor shall store materials only within the work limit and Material Storage Areas designated in the plans. Should these areas prove inadequate, the Contractor shall make arrangements for and pay all fees in connection with the use of property other than the site for storage of materials or other purpose.

**7-1.26 Waiver by the City.** - The Contractor hereby agrees that waiver by the City of any breach or violation or any term or condition of this contract agreement shall not be deemed to be a waiver or any other term or condition

## SECTION 7

## LEGAL RELATIONS AND RESPONSIBILITY

contained herein or a waiver of any subsequent breach or violation of the same term or condition of the contract. Payment for or acceptance by City of any work or services by Contractor performed under this contract shall not be deemed to be a waiver of any term or condition of this contract even if at the time of such payment or acceptance the City was aware of the Contractor's failure to comply with any term or condition of the contract.

**7-1.27 Archeological and Paleontological Rights.** - Notwithstanding any other provisions of this contract, in the event any archeological or paleontological objects within the project are discovered during the course of the work, the Contractor shall halt the work within the area affected, and the City shall have and retain all right, title and interest to such objects and shall have the further right, during the course of the contract, to examine or cause to have examined, the site of the work for any such objects and to perform or have performed archeological or paleontological excavations and all other related work to explore for, discover, recover and remove such objects from the site of the work.

In the event the work of archeological or paleontological examination and related work delays the Contractor's work, the Contractor shall be entitled to an extension of time to complete the work equal to the number of days thus delayed. Any such delays will be considered right-of-way delays within the meaning of Section 8-1.09, "Right of Way Delays", and compensation for such delay will be determined in accordance with said Section 8-1.09. The Contractor shall be entitled to no other compensation for any Archeological and Paleontological delays.

**7-1.28 Emergencies.** - In an emergency affecting the safety of persons or property the Contractor shall act reasonably to prevent threatened damage, injury or loss. The Contractor shall immediately notify the City in writing of such actions. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Section 4-1.03, "Changes."

**7-1.29 Integration Clause.** - The contract, including these general and any special or technical specifications as defined herein, constitutes the entire agreement between the parties. There are no prior or contemporaneous oral agreements between the parties not set forth in the contract. Any modification to the contract or these specifications must be in writing in order to be effective and binding on the parties to the contract.

END OF SECTION

## **SECTION 8 PROSECUTION AND PROGRESS**

8-1.01	Subcontracting
8-1.02	Assignment
8-1.03	Beginning of Work
8-1.04	Progress Schedule
8-1.05	Temporary Suspension of Work
8-1.06	Time of Completion
8-1.06A	Sunday, Holiday and Night Work
8-1.07	Liquidated Damages
8-1.07A	No Pay For Delay
8-1.08	Blank
8-1.09	Right of Way Delays
8-1.10	Utility and Non-Highway Facilities
8-1.11	Termination of Contract
8-1.11A	Continuation of Contract
8-1.12	Concurrent Delays
8-1.13	City's Right to Carry Out the Work



## SECTION 8

## PROSECUTION AND PROGRESS

**8-1.01 Subcontracting.** - The Contractor shall give personal attention to the fulfillment of the contract and shall keep the work under the Contractor's control.

No subcontractor will be recognized by City as such and purpose of City, and all persons engaged in the work of construction will be considered by City as employees of the Contractor and the Contractor will be held responsible for their work, which shall be subject to the provisions of the contract and specifications.

The Contractor shall perform with the Contractor's own organization contract work amounting to not less than 50 percent of the original total contract price, except that any designated "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the Contractor with the Contractor's own organization. When items of work in the Engineer's Estimate are preceded by the letter (S), said items are designated "Specialty Items." Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated percentage of the contract item bid price, determined from information submitted by the Contractor, subject to approval by the Engineer.

Before work is started on a subcontract, the Contractor shall file with the Engineer a written statement showing the work to be subcontracted, the names of the subcontractors and the description of each portion of the work to be so subcontracted.

When a portion of the work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City, the subcontractor or any designated employee of the subcontractor shall be removed immediately on the request of the Engineer and shall not again be employed on the work.

The roadside production of materials produced by other than the Contractor's forces shall be considered as subcontracted. Roadside production of materials shall be construed to be production of aggregates of all kinds with portable, semiportable or temporary crushing or screening, proportioning, and mixing plants established or reopened for the purpose of supplying aggregate or material for a particular project or projects. The erection, establishment, or reopening of such plants and the operation thereof in the production of said materials for use on the work shall conform to the requirements relating to labor set forth in these specifications and in the special provisions.

Nothing contained in the specifications or plans shall be construed as creating any contractual relationship between any subcontractor and the City. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

The Contractor shall be fully responsible to the City for the acts and omissions of subcontractors, and of persons employed by the Contractor.

The Contractor shall be responsible for the coordination of trades, subcontractors, and suppliers engaged upon this work.

Any and all subcontractors or material suppliers at any tier shall be bound by the provisions of these specifications.

**8-1.02 Assignment.** - The performance of the contract may not be assigned, except upon the written consent of the City. Consent will not be given to any proposed assignment which would relieve the original Contractor or the original Contractor's surety of their responsibilities under the contract nor will the City consent to any assignment of a part of the work under the contract.

The Contractor may assign moneys due or to become due under the contract and such assignment will be recognized by the City, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper set-offs in favor of the City and to all deductions provided for in the contract and particularly all money withheld, whether assigned or not, shall be subject to being used by the City for the completion of the work in the event that the Contractor should be in default therein.

**8-1.03 Beginning of Work.** - The Contractor shall begin work within 10 days after receiving the Notice to Proceed from the Engineer, and shall diligently prosecute the same to completion within the time limit provided in the special provisions. The first working day charged shall be the 11th calendar day following the date of the "Notice to Proceed". Should the 11th day fall on a Saturday, Sunday or Holiday, the following working day shall be the first working day charged.

The Contractor shall notify the Engineer, in writing, of the Contractor's intent to begin work at least 72 hours before work is begun. The notice shall be delivered to the Office of the Engineer and shall specify the date the Contractor intends to start. Under no circumstances shall the Contractor enter the site of the work until receipt of the Notice to Proceed.

Should the Contractor begin work in advance of receiving Notice to Proceed, any work performed in advance of the said date of Notice to Proceed shall be considered as having been done by the Contractor's own risk and expense and as a volunteer unless a Notice to Proceed is subsequently issued. Should any work be performed prior to Notice to Proceed, such work shall be subject to inspection and acceptance by City as provided for elsewhere in these Contract documents.

**8-1.04 Progress Schedule.** - When required by the special provisions, the Contractor shall submit to the Engineer a progress schedule within 20 working days of the Notice to Proceed, or within 10 working days of the Engineer's written request at any other time prior to the Notice to Proceed.

The Contractor must furnish the schedule in the form specified in the special provisions.

The schedule shall show the order in which the Contractor proposes to carry out the work, the dates on which the Contractor will start the several salient features of the work (including procurement of materials, plant, and equipment), and the contemplated dates for completing the said salient features.

The progress schedules submitted shall be consistent in all respects with the time and order of work requirements of the contract.

Subsequent to the time that submittal of a progress schedule is required in accordance with these specifications, no progress payments will be made for any work until a satisfactory schedule has been submitted to the Engineer.



The City retains the right to reject any and all construction schedules submitted by the Contractor, in the City's sole discretion, or when City determines that the Contractor has too many items on the Critical Path or the logic of the schedule is in error.

Subject to the above provisions, nothing herein shall preclude the Contractor from early completion of the contract.

**8-1.05 Temporary Suspension of Work.** - The Engineer shall have the authority to suspend the work wholly or in part, for such period as the Engineer may deem necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the work, or for such time as the Engineer may deem necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the contract. The Contractor shall immediately comply with the written order of the Engineer to suspend the work wholly or in part. The suspended work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing by the Engineer.

In the event that a suspension of work is ordered as provided above, and should such suspension be ordered by reason of the failure of the Contractor to carry out orders or to perform any provision of the contract; or by reason of weather conditions being unsuitable for performing any item or items of work, which work, in the sole opinion of the Engineer, could have been performed prior to the occurrence of such unsuitable weather conditions had the Contractor diligently prosecuted the work when weather conditions were suitable; the Contractor, at the Contractor's expense, shall do all the work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public traffic; and provide for proper and efficient operations of sewer, drainage, and other facilities within the site of the work during the period of such suspension as provided in Sections 7-1.08, "Public Convenience," and 7-1.09, "Public Safety," and as specified in the special provisions for the work. In the event that the Contractor fails to perform the work above specified, the City will perform such work and the cost thereof will be deducted from moneys due or to become due the Contractor.

In the event that a suspension of work is ordered by the Engineer due to unsuitable weather conditions, and in the sole opinion of the Engineer, the Contractor has prosecuted the work with energy and diligence prior to the time that operations were suspended, the cost of providing a smooth and unobstructed passageway through the work will be paid for as extra work as provided in Section 4-1.03D or, at the option of the Engineer, such work will be performed by the City at no cost to the Contractor.

If the Engineer orders a suspension of all of the work or a portion of the work which is the current controlling operation or operations, due to unsuitable weather or to such other conditions as are considered unfavorable to the suitable prosecution of the work, the days on which the suspension is in effect shall not be considered working days as defined in Section 8-1.06, "Time of Completion." If a portion of work at the time of such suspension is not a current controlling operation or operations, but subsequently does become the current controlling operation or operations, the determination of working days will be made on the basis of the then current controlling operation or operations.

If a suspension of work is ordered by the Engineer, due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the contract, the days on which the suspension order is in effect shall be considered

working days if such days are working days within the meaning of the definition set forth in Section 8-1.06, "Time of Completion."

In the event of a suspension of work under any of the conditions set forth under this Section, such suspension of work shall not relieve the Contractor of the Contractor's responsibilities as set forth in the specifications including but not limited to the Contractor's maintenance of the Project site in a safe condition.

**8-1.06 Time of Completion.** - Time is of the essence in the performance of the Contractor's obligations under this contract.

The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within the time set forth in the special provisions.

Should the Contractor prepare to begin work at the regular starting time of any day on which increment weather, or the conditions resulting from the weather, or the condition of the work, prevents the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations, the Contractor will not be charged for a working day whether or not conditions should change thereafter during said day and the major portion of the day could be considered to be suitable for such construction operations.

The current controlling operation or operations is to be construed to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Engineer and the Contractor, which, if delayed or prolonged, will delay the time of completion of the contract.

Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom, shall be made by the Engineer. The Contractor will be allowed 15 days from the issuance of the weekly statement of working days in which to file a written protest setting forth in what respects the Contractor differs from the Engineer, otherwise the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct. The Engineer will furnish the Contractor a weekly statement showing the number of working days charged to the contract for the preceding week, the number of working days of time extensions being considered or approved, the number of working days originally specified for the completion of the contract and the number of working days remaining to complete the contract and the extended date for completion thereof, except when working days are not being charged in accordance with the provisions in Section 8-1.05, "Temporary Suspension of Work."

**8-1.06A Sunday, Holiday and Night Work.** - Unless otherwise provided in the Special Provisions, work shall not be done between the hours of 6:00 P.M. and 7:00 A.M. nor on Sundays or legal holidays except such work as is necessary for the proper care and protection of work already performed, or except in case of an emergency, and in any case, only with the prior written permission of the Engineer.

It is understood, however, that night work may be established as a regular procedure by the Contractor if they first obtains the written permission of the Engineer, and that such permission may be revoked at any time by the Engineer if the Contractor fails to maintain at night, adequate force and equipment for reasonable prosecution and to justify inspection of the work.

**8-1.07 Liquidated Damages.** - It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements is not finished or completed within the number of working days as set forth in the special provisions, damage will be sustained by the City, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the City, the sum set forth in the special provisions per day for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed; and the Contractor agrees to pay said liquidated damages herein provided for, and further agrees that the City may deduct the amount thereof from any moneys due or that may become due the Contractor under the contract.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the number of working days specified, the Engineer shall have the right to increase the number of working days or not, as the Engineer may deem best to serve the interest of the City, and if the Engineer decides to increase the said number of working days, the Engineer shall further have the right to charge to the Contractor, the Contractor's heirs, assigns or sureties and to deduct from the final payment for the work all or any part, as the Engineer may deem proper, of the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, except that cost of final surveys and preparation of final estimate shall not be included in such charges.

The Contractor will be granted an extension of time and will not be assessed with liquidated damages or the cost of engineering and inspection for any portion of the delay in completion of the work beyond the time named in the special provisions for the completion of the work caused by acts of God or of the public enemy, fire, floods, tidal waves, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes, provided, that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of any such delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

No extension of time will be granted for a delay caused by a shortage of materials unless the Contractor furnishes to the Engineer documentary proof that the Contractor has made every effort to obtain such materials from all known sources within reasonable reach of the work in a diligent and timely manner, and further proof in the form of supplementary progress schedules, as required in Section 8-1.04, "Progress Schedule," that the inability to obtain such materials when originally planned, did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations. The term "shortage of materials," as used in this section, shall apply only to materials, articles, parts or equipment which are standard items and are to be incorporated in the work. The term "shortage of materials," shall not apply to materials, parts, articles or equipment which are processed, made, constructed, fabricated or manufactured to meet the specific requirements of the contract. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. Delays in obtaining materials due to priority in filling orders will not constitute a shortage of materials.

If the Contractor is delayed in completion of the work by reason of changes made under Section 4-1.03, "Changes," or by failure of the City to acquire or clear right of way, or by moving the Contractor's plant pursuant to Section 6-2.03, "Mandatory Local Material Sources," or by any act of the Engineer or of the City, not contemplated by the contract, an extension of time commensurate with the delay in completion of the work thus caused will be granted and the Contractor shall be relieved from any claim for liquidated damages, or engineering and inspection charges or other penalties for the period covered by such extension of time; provided that the Contractor shall notify the Engineer in writing of the causes of delay within 15 days from the beginning of any such delay. The Engineer shall ascertain the facts and the extent of the delay, and the Engineer's findings thereon shall be final and conclusive.

It is the intention of the above provisions that the Contractor shall not be relieved of liability for liquidated damages or engineering and inspection charges for any period of delay in completion of the work in excess of that expressly provided for in this Section 8-1.07.

**8-1.07A No Pay for Delay.**- Except as provided in Section 7-1.28 "Archeological and Paleontological Rights", Section 8-1.10 "Utility and Non-Highway Facilities", Section 8-1.09 "Right of Way Delays" and except as provided in Section 7102 of the Public Contract Code, the Contractor shall receive no additional compensation for any delay to the Contractor's work. Such delays are expressly contemplated by the parties hereto. The Contractor's sole remedy for such delay will be an appropriate extension of time to the contract completion of the project.

If the City causes a substantial delay to the project and the Contractor sustains losses which could not have been avoided by the judicious handling of forces, equipment and plant, the City, in its sole discretion, may elect to pay the Contractor an amount the City finds fair and reasonable for the Contractor's actual loss, as in the opinion of the City, was unavoidable. The total amount of any payment made pursuant to this Section, including overhead, profit and administration, shall be as determined in Section 8-1.09 "Right of Way Delays."

#### **8-1.08 (Blank)**

**8-1.09 Right of Way Delays.** - If, through the failure of the City to acquire or clear right of way, the Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment and plant, there shall be paid to the Contractor such amount as the Engineer may find to be a fair and reasonable compensation for such part of the Contractor's actual loss, as, in the opinion of the Engineer, was unavoidable, determined as follows:

Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra work paid for on a force account basis, as provided in Section 9-1.03A(3), "Equipment Rental," with the following exceptions:

- (1) The right of way delay factor for each classification of equipment shown in the Caltrans publication entitled Labor Surcharge And Equipment Rental Rates, which is a part of the contract, will be applied to such equipment rental rate.

- (2) The time for which such compensation will be paid will be the actual normal working time during which such delay condition exists, but in no case will exceed 8 hours in any one day.
- (3) The days for which compensation will be paid will be the calendar days, excluding Saturdays, Sundays and legal holidays, during the existence of such delay, except that when rental of equipment is paid for under the provisions in Section 9-1.03A (3b), "Equipment not on the Work," no payment will be made for right of way delays in accordance with the provisions in this Section 8-1.09.

Actual loss shall be understood to include no items of expense other than idle time of equipment and necessary payments for idle time of men, cost of extra moving of equipment, and cost of longer hauls. Compensation for idle time of equipment will be determined as provided in this Section 8-1.09 and compensation for idle time of men will be determined as provided in Section 9-1.03A(1), "Labor," and no markup will be added in either case for overhead and profit. The cost of extra moving of equipment and the cost of longer hauls will be paid for as extra work as provided in Section 4-1.03D.

If performance of the Contractor's work is delayed as the result of the failure of the City to acquire or clear right of way, an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages," will be granted.

**8-1.10 Utility and Non-Highway Facilities.** - Attention is directed to Section 7-1.11, "Preservation of Property," and Section 7-1.12, "Responsibility for Damage." The Contractor shall protect from damage utility and other non-highway facilities that are to remain in place, be installed, relocated or otherwise rearranged.

It is anticipated that some or all of the utility and other non-highway facilities, both above ground and below ground, that are required to be rearranged (as used herein, rearrangement includes installation, relocation, alteration, or removal) as a part of the highway improvement will be rearranged in advance of construction operations. Where it is not anticipated that such rearrangement will be performed prior to construction, or where the rearrangement must be coordinated with the Contractor's construction operations, the existing facilities that are to be rearranged will be indicated on the plans or in the special provisions.

Where a rearrangement is indicated on the plans or in the special provisions, the Contractor will have no liability for the costs of performing the work involved in such rearrangement.

The right is reserved to the City and the owners of facilities, or their authorized agents, to enter upon the highway right-of-way for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such other forces. Wherever necessary, the work of the Contractor shall be coordinated with the rearrangement of utility or other non-highway facilities, and the Contractor shall make arrangements with the owner of such facilities for the coordination of the work.

Attention is directed to the possible existence of underground main or trunk line facilities not indicated on the plans or in the special provisions and to the possibility that underground main or trunk lines may be in a location different from that which is indicated on the plans or in the special provisions. The Contractor shall ascertain the exact location of underground main or trunk lines whose presence is indicated on the plans or in the special provisions, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities which can be inferred from the presence of visible facilities such as buildings, meters and junction boxes prior to doing work that may damage any of such facilities or interfere with their service.

If the Contractor cannot locate an underground facility whose presence is indicated on the plans or in the special provisions, the Contractor shall so notify the Engineer in writing. If the facility for which such notice is given is in a substantially different location from that indicated on the plans or in the special provisions, the additional cost of locating the facility will be paid for as extra work as provided in Section 4-1.03D.

If the Contractor discovers underground main or trunk lines not indicated on the plans or in the special provisions, the Contractor shall immediately give the Engineer and the Utility Company written notification of the existence of such facilities. Such main or trunk lines shall be located and protected from damage as directed by the Engineer and the cost of such work will be paid for as extra work as provided in Section 4-1.03D. The Contractor shall, if directed by the Engineer, repair any damage which may occur to such main or trunk lines. The cost of such repair work, not due to the failure of the Contractor to exercise reasonable care, will be paid for as extra work as provided in Section 4-1.03D. Damage due to the Contractor's failure to exercise reasonable care shall be repaired at the Contractor's cost and expense.

Where it is determined by the Engineer that the rearrangement of an underground facility is essential in order to accommodate the highway improvement and the plans and specifications do not provide that such facility is to be rearranged, the Engineer will provide for the rearrangement of such facility by other forces or such rearrangement shall be performed by the Contractor and will be paid for as extra work as provided in Section 4-1.03D.

When ordered by the Engineer in writing, the Contractor shall rearrange any utility or other non-highway facility necessary to be rearranged as a part of the highway improvement, and such work will be paid for as extra work as provided in Section 4-1.03D.

Should the Contractor desire to have any rearrangement made in any utility facility, or other improvement, for the Contractor's convenience in order to facilitate construction operations, which rearrangement is in addition to, or different from, the rearrangements indicated on the plans or in the special provisions, the Contractor shall make whatever arrangements are necessary with the owners of such utility or other non-highway facility for such rearrangement and bear all expenses in connection therewith.

The Contractor shall immediately notify the Engineer of any delays to operations as a direct result of underground main or trunk line facilities which were not indicated on the plans or in the special provisions or were located in a position substantially different from that indicated on the plans or in the special provisions, or as a direct result of utility or other non-highway facilities not being rearranged as herein provided (other than delays in connection with rearrangements made to facilitate construction operations or delays due to a strike or labor dispute). Any

such delays will be considered right of way delays within the meaning of Section 8-1.09, "Right of Way Delays," and compensation for such delay will be determined in accordance with said Section 8-1.09. The Contractor shall be entitled to no other compensation for any such delay.

Any delays to the Contractor's operations as a direct result of utility or other non-highway facilities not being rearranged as provided in this Section 8-1.10, due to a strike or labor dispute, will entitle the Contractor to an extension of time as provided in Section 8-1.07, "Liquidated Damages." The Contractor shall be entitled to no other compensation for any such delay.

Notwithstanding any other provisions of the contract, plans, specifications or Special Provisions, the City shall, as between the City and Contractor, assume the responsibility and the cost therefor for the location, repair of damage not due to the Contractor's failure to exercise reasonable care, removal, or relocation of existing main and trunkline utility facilities located on the site of the work, if such facilities are not identified in the plans or specifications made a part of the Notice to Contractors inviting bids for the work, and for equipment on the project necessarily idled during such location, repair, removal or relocation. If the Contractor, while performing the contract, discovers utility facilities not identified by the City in the plans or specifications, the Contractor shall immediately notify the Engineer and the utility in writing. The public utility, where it is the owner of an affected utility, shall have the sole discretion to perform repairs, removal or relocation work or permit the Contractor to do such repairs, removal or relocation work on the affected utility at a reasonable price.

The Contractor shall not be assessed liquidated damages for delay in completion of the project when such delay was caused by the failure of the City to provide for removal or relocation of such utility facilities.

Nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction. However, nothing herein shall relieve the City from identifying main or trunklines in the plans and specifications.

Nothing herein shall preclude the City from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

Nothing herein shall be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.

**8-1.11 Termination of Contract.** - The contract may be terminated by the Engineer when termination is authorized by Section 7-1.125, "Legal Actions Against the City," Section 7-1.165, "Damage by Storm, Flood, Tidal Wave or Earthquake," or by other provisions of the contract which authorize termination. The City also reserves the right to terminate the contract at any time upon a determination by the Engineer in the Engineer's sole discretion that termination of the contract is in the best interest of the City. If the City elects to terminate the contract for convenience, the termination of the contract and the total compensation payable to the Contractor shall be governed by the following:

- (A) The City will issue the Contractor a written notice signed by the Engineer, specifying that the contract is terminated. Upon receipt of said written notice, the

Contractor will be relieved of further responsibility for damage to the work (excluding materials) as specified in Section 7-1.16, "Contractor's Responsibility for the Work and Materials," and, except as otherwise directed in writing by the Engineer, the Contractor shall:

- (1) Stop all work under the contract except that specifically directed to be completed prior to acceptance.
- (2) Perform work the Engineer deems necessary to secure the project for termination.
- (3) Remove equipment and plant from the site of the work.
- (4) Take such action as is necessary to protect materials from damage.
- (5) Notify all subcontractors and suppliers that the contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.
- (6) Provide the Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including its storage location, and such other information as the Engineer may request.
- (7) Dispose of materials not yet used in the work as directed by the Engineer. It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including materials for which partial payment has been made as provided in Section 9-1.06, "Partial Payments," and with bills of sale or other documents of title for such materials.
- (8) Subject to the prior written approval of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the City all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
- (9) Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the contract including, on projects as to which Federal and State funds are involved, all documentation required under the Federal and State requirements included in the contract.



- (10) Take such other actions as the Engineer may direct.
- (B) Acceptance of the contract as hereinafter specified shall not relieve the Contractor of responsibility for damage to materials. The Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:
  - (1) The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Section 9-1.06, "Partial Payments," and for materials furnished by the City for use in the work and unused shall terminate when the Engineer certifies that such materials have been stored in the manner and at the locations the Engineer has directed.
  - (2) The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the contract is to be terminated shall terminate when title and delivery of such materials has been taken by the City.
  - (3) When the Engineer determines that the Contractor has completed the work under the contract directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, the Contractor will recommend that the Engineer formally accept the contract to the extent performed, and immediately upon and after such acceptance by the Engineer, the Contractor will not be required to perform any further work thereon and shall be relieved of the Contractor's contractual responsibilities for injury to persons or property which occurs after the formal acceptance of the project by the Engineer.
- (C) Termination of the contract shall not relieve the surety of its obligation for any just claims arising out of the work performed.
- (D) The total compensation to be paid to the Contractor shall be determined by the Engineer on the basis of the following:
  - (1) The reasonable cost to the Contractor, without profit, for all work performed under the contract, including mobilization, demobilization and work done to secure the project for

- termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work. Deductions will also be made, when the contract is terminated under the authority of Section 7-1.165, "Damage by Storm, Flood, Tidal Wave or Earthquake," for the cost of materials damaged by the "occurrence." When, in the opinion of the Engineer, the cost of a contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing such work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.
- (2) A reasonable allowance for profit on the cost of the work performed as determined under Subsection (1), provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that the Contractor would have made a profit had the contract been completed and provided further, that the profit allowed shall in no event exceed 4 percent of said cost.
  - (3) The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the Engineer.
  - (4) A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the contract.
  - (5) A reasonable credit to the City for defective or incomplete work not corrected.

All records of the Contractor and subcontractors necessary to determine compensation in accordance with the provisions of this Section 8-1.11 shall be open to inspection or audit by representatives of the City at all times after issuance of the Notice of Termination and for a period of 3 years, thereafter, and such records shall be retained for that period.

After acceptance of the work by the Engineer, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Estimate in accordance with Section 9-1.07B, "Final Payment and Claims," when, in the Engineer's opinion, the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the Final Estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the contract.

If this contract is terminated by the City for cause, and it is later determined that the proper basis for a termination for cause did not exist, the termination shall be deemed to have been a termination for convenience and governed by the terms of this contract dealing with such termination.

If the contract is terminated by the City for cause or convenience, such termination shall neither act as a waiver by the City of its right to require the Contractor to correct defects in the work performed by the Contractor nor void any warranties applicable to the work performed under the contract.

The provisions of this Section 8-1.11 shall be included in all subcontracts.

In the event of conflict between the termination provisions of this Section 8-1.11 and any other provision of the contract, this Section 8-1.11 shall prevail.

**8-1.11A Continuation of Contract.** - If a dispute should arise between the Contractor and the City regarding work performed or to be performed or payment therefor, Contractor hereby agrees that it will continue to perform the work called for under this contract and hereby expressly waives its rights, if any, to terminate or suspend work pending resolution of said dispute.

**8-1.12 Concurrent Delays.** - Where there are concurrent delays to a controlling item of work no extension of time or additional compensation shall be granted to the Contractor where at least one of the delays is due, in part or in whole, to the Contractor's own acts.

**8-1.13 City's Right to Carry Out the Work.** - If the Contractor defaults or neglects to carry out the work in accordance with the contract documents, and fails within seven days after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, after 7 days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy the City may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Engineer's additional services made necessary by such default, neglect or failure. Such action by the City and the amount charged to the Contractor are both subject to the prior approval of the Engineer. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

END OF SECTION

## **SECTION 9 MEASUREMENT AND PAYMENT**

9-1.01	Measurement of Quantities
9-1.015	Final Pay Quantities
9-1.02	Scope of Payment
9-1.03	Force Account Payment
9-1.03A	Work Performed by Contractor
9-1.03A(1)	Labor
9-1.03A(1a)	Actual Wages
9-1.03A(1b)	Labor Surcharge
9-1.03A(1c)	Subsistence and Travel Allowance
9-1.03A(2)	Materials
9-1.03A(3)	Equipment Rental
9-1.03A(3a)	Equipment on the Work
9-1.03A(3b)	Equipment not on the Work
9-1.03A(3c)	Owner-Operated Equipment
9-1.03B	Work Performed by Special Forces or Other Special Services
9-1.03C	Records
9-1.03D	Payment
9-1.04	Notice of Potential Claim
9-1.05	Stop Notices
9-1.06	Partial Payments
9-1.065	Payment of Withheld Funds
9-1.07	Payment After Acceptance
9-1.07A	Payment Prior to Proposed Final Estimate
9-1.07B	Final Payment and Claims
9-1.08	Blank
9-1.09	Blank
9-1.10	No Arbitration of Disputes



## SECTION 9

## MEASUREMENT AND PAYMENT

**9-1.01 Measurement of Quantities.** - All work to be paid for at a contract price per unit of measurement will be measured by the Engineer in accordance with United States Standard Measures. A ton shall consist of 2,000 pounds avoirdupois.

Unless shipped by rail, material paid for by weight shall be weighed on scales furnished by and at the expense of the Contractor or on other sealed scales regularly inspected by the Division of Measurement Standards or its designated representative.

All weighing, measuring and metering devices used to measure the quantity of materials used in the work shall be suitable for the purpose intended and shall conform to the tolerances and specifications as outlined in Title 4, Chapter 8 of the California Administrative Code, the provisions of the California Business and Professions Code, Division 5, and these specifications. Devices not Type-approved by the Division of Measurement Standards shall be Type-approved in accordance with California Test 109.

All weighing, measuring or metering devices used to determine the quantity of materials to be paid for will be considered to be "commercial devices," and shall be sealed by the Division of Measurement Standards or its authorized representative as often as the Engineer may deem necessary. The installation of all portable vehicle scales must be approved by the Engineer prior to sealing.

Vehicle scales shall be of sufficient size to permit the entire vehicle or combination of vehicles to rest on the scale deck while being weighed. Combination vehicles may be weighed as separate units provided they are disconnected while being weighed. The maximum concentrated load shall not exceed the manufacturer's designed sectional capacity of the scale.

All weighing, measuring or metering devices required by these specifications for the purpose of proportioning a material or product will be considered to be "non-commercial devices," and shall be tested and approved in accordance with California Test 109. This testing shall be done by one of the following, in the presence of the Engineer, as often as the Engineer deems necessary:

- A County Sealer of Weights and Measures
- A Scale Service Agency
- A Division of Measurement Standards Official

The Contractor shall notify the Engineer at least 24 hours in advance of testing the device.

All undersupports for scale bearing points shall be constructed of Portland cement concrete produced from commercial quality aggregates and cement, which contains not less than 470 pounds of cement per cubic yard. Undersupports shall be constructed in a manner to prevent any shifting or tilting of the support. They shall have a minimum height of 14 inches above ground line. The footings shall have a minimum depth of 6 inches below the ground line. The bearing surface of the footings shall have a minimum width of 30 inches and shall be of such area that the pressure does not exceed 4,000 pounds per square foot. Adequate drainage shall

be provided to prevent saturation of the ground under the scale. Scale bulkheads shall be of adequate material and strength to resist displacement.

If timber bulkheads are used, the minimum cross section shall be 8 inches by 8 inches. Wedges shall not be used to shim the supports. If shimmying is necessary, it shall be done by securely attached metal shims, or by grouting. Shimmying shall not exceed 3 inches. The approach ramps shall be level with the scale deck for a distance of not less than 1/2 the length of the scale deck. The mechanical indicating elements shall be installed level and plumb and shall be rigidly mounted upon a concrete foundation.

The lever system and mechanical indicating elements of hopper scales shall be rigidly attached to non-yielding supports in such a manner as to prevent any loss in weight due to bending and distortion of the supports.

When a multiple beam type scale is used in proportioning materials, an over and under indicator shall be provided which will give positive visible evidence of the amount of any over and under weight. The indicator shall be so designed that it will operate during the addition of the last 200 pounds of any weighing. The over-travel of the indicator shall be at least 1/3 of the loading travel. Indicators shall be enclosed against moisture and dust.

All over and under, dial, and other indicators for weighing and measuring systems used in proportioning materials shall be grouped so that the smallest increment for each indicator can be accurately read from the point at which the proportioning operation is controlled.

The Contractor shall bear the expense of all service fees for testing and approving of "non-commercial devices." The cost of the equipment, labor and materials furnished by the Contractor to assist in the testing of weighing, measuring or metering devices will be considered as included in the contract prices paid for the various contract items requiring said weighing, measuring or metering and no separate payment will be made there.

Whenever pay quantities of material are determined by weighing, the scales shall be operated by a weighmaster licensed in accordance with the provisions of the California Business and Professions Code, Division 5, Chapter 7. The Contractor shall furnish a Public Weighmaster's certificate or certified daily summary weigh sheets. A representative of the Department may, at the discretion of the Engineer, be present to witness the weighing and to check and compile the daily record of such scale weights.

When required by the Engineer, the operator of each vehicle weighed shall obtain a weight or load slip from the weigher and deliver said slip to the Engineer at the point of delivery of the material.

If material is shipped by rail, the car weights will be accepted provided that actual weight of material only will be paid for and not minimum car weight used for assessing freight tariff, and provided further that car weights will not be acceptable for material to be passed through mixing plants.

Vehicles used to haul material being paid for by weight shall be weighed empty daily and at such additional times as the Engineer may direct. Each vehicle shall bear a plainly legible identification mark. Vehicles may from time to time be required by the Engineer to have the weight of the material to be paid for verified by weighing the empty and loaded vehicle on such other scales as the Engineer may designate.

All loads in vehicles hauled over streets and highways shall be legal loads and no payment will be made for the loads in excess of the legal load limits.

All materials which are specified for measurement by the cubic yard "measured in the vehicle" shall be hauled in vehicles of such type and size that the actual contents may be readily and accurately determined. Unless all vehicles are of uniform capacity, each vehicle must bear a plainly legible identification mark indicating its water level capacity. All vehicles shall be loaded to at least their water level capacity and all loads shall be leveled when the vehicles arrive at the point of delivery. Loads hauled in vehicles not meeting the above requirements or loads of a quantity less than the capacity of the vehicle, measured after being leveled off as above provided, will be subject to rejection, and no compensation will be allowed for such material.

When material is to be measured and paid for on a volume basis and it is impractical to determine the volume by the specified method of measurement, or when requested by the Contractor in writing and approved by the Engineer in writing, the material will be weighed in accordance with the requirements specified for weight measurement and such weights will be converted to volume measurement for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities will be adopted.

Quantities of material wasted or disposed of in a manner not called for under the contract, or rejected loads of material, including material rejected after it has been placed by reason of the failure of the Contractor to conform to the provisions of the contract, or material not unloaded from the transporting vehicle, or material placed outside of the lines indicated on the plans or established by the Engineer, or material remaining on hand after completion of the work; will not be paid for and such quantities will be deducted from the final total quantities. No compensation will be allowed for hauling and disposing of rejected material.

The weight of all aggregate or other roadway material which is to be paid for on a weight basis, except imported borrow, imported topsoil, straw, fiber, aggregate subbases, aggregate bases or aggregate for cement treated bases, will be determined by deducting from the weight of material, the weight of water in the material at the time of weighing in excess of 3 percent of the dry weight of the material. When imported borrow, imported topsoil, or aggregate subbase is being paid for on weight basis, the weight to be paid for will be determined by deducting from the weight of the material, the weight of water in the material at the time of weighing in excess of 6 percent of the dry weight of the material. When straw is being paid for on weight basis, the weight to be paid for will be determined by deducting from the weight of straw, the weight of water in the straw at the time of weighing in excess of 15 percent of the dry weight of the straw. When fiber is being paid for on a weight basis, the weight of water in the fiber at the time of weighing shall not exceed 15 percent of the dry weight of the fiber. No deduction will be made for the weight of water in fiber. The percentage of water in the material shall be determined by California Test 226. The weight of aggregate base and aggregate for cement treated bases which are to be paid for on a weight basis, will be determined as provided in Section 26, "Aggregate Bases," and Section 27, "Cement Treated Bases," respectively.

The weight of water deducted as provided in this Section 9-1.01 will not be paid for.

Full compensation for all expense involved in conforming to the requirements specified in this Section 9-1.01 shall be considered as included in the



unit prices paid for the materials being measured or weighed and no additional compensation will be allowed therefor.

**9-1.015 Final Pay Quantities.** - When the estimated quantities for a specific portion of the work are designated in the contract as final pay quantities, said estimated quantities shall be the final quantities for which payment for such specific portion of the work will be made, unless the dimensions of said portions of the work shown on the plans are revised by the Engineer. If such dimensions are revised, and such revisions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the changes in the dimensions. The estimated quantities for such specific portion of the work shall be considered as approximate only and no guarantee is made that the quantities which can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantities. No allowance will be made in the event that the quantities based on computations do not equal the estimated quantities.

When portions of an item have been designated in the contract as final pay quantities, portions not so designated will be measured and paid for in accordance with the applicable provisions of these specifications and the special provisions.

In case of a discrepancy between the quantities designated in the contract as final pay quantities and the quantity of the same item shown in the Engineer's Estimate, payment will be based on the final pay quantities shown on the plans.

**9-1.02 Scope of Payment.** - The Contractor shall accept the compensation provided in the contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed work and for performing all work contemplated and embraced under the contract; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the acceptance by the City and for all risks of every description connected with the prosecution of the work, also for all expenses incurred in consequence of the suspension or discontinuance of the work as provided in the contract, and for completing the work according to the plans and specifications. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

No compensation will be made in any case for loss of anticipated profits.

Any payment to the Contractor for work performed under this contract, whether a partial progress payment or final payment, shall not waive City's right to demand that the Contractor correct defects in the Contractor's work, whether or not defects were known to the Engineer, the City, its agents or employees at the time such payment was made.

Whenever it is specified or indicated in the contract documents, that the Contractor is to do work, or furnish materials for which no price is fixed in the contract, it is understood and agreed, that there is included in each lump sum or unit price bid, the entire cost of all work, incidental to the completion of that part of the work covered by each lump sum or unit price bid, or if not directly incidental to any specific bid items, the cost thereof has been distributed among those bid items deemed most appropriate by the Contractor.

**9-1.03 Force Account Payment.** - When extra work is to be paid for on a force account basis, the labor, materials and equipment used in the performance

of such work shall be subject to the approval of the Engineer and compensation will be determined as follows:

**9-1.03A Work Performed by Contractor.** - The Contractor will be paid the direct costs for labor, materials and equipment used in performing the work determined as hereinafter provided in Sections 9-1.03A (1), "Labor," 9-1.03A (2), "Materials," and 9-1.03A (3), "Equipment Rental," except where agreement has been reached to pay in accordance with Section 9-1.03B, "Work Performed by Special Forces or Other Special Services."

To the total of the direct costs computed as provided in Sections 9-1.03A (1), "Labor," 9-1.03A (2), "Materials," and 9-1.03A (3), "Equipment Rental," there will be added a markup of 33 percent to the cost of labor, 15 percent to the cost of materials, and 15 percent to the equipment rental.

The above markups shall constitute full compensation for all direct and indirect overhead costs and profit which shall be deemed to include all items of expense not specifically designated as cost or equipment rental in Sections 9-1.03A (1), "Labor," 9-1.03A (2), "Materials," and 9-1.03A (3), "Equipment Rental." The total payment made as provided above shall be deemed to be the actual cost of such work and shall constitute full compensation therefor.

When extra work to be paid for on a force account basis is performed by a subcontractor, approved in accordance with the provisions in Section 8-1.01, "Subcontracting," an additional markup of 5 percent will be added to the total cost of said extra work including all markups specified in this Section 9-1.03A. Said additional 5 percent markup shall reimburse the Contractor for additional overhead, job site, home office and administrative costs, and no other additional payment will be made by reason of performance of the extra work by a subcontractor.

**9-1.03A (1) Labor.** - The Contractor will be paid the cost of labor for the workers (including foremen when authorized by the Engineer), used in the actual and direct performance of the work. The cost of labor, whether the employer is the Contractor, subcontractor, or other forces, will be the sum of the following:

**9-1.03A (1a) Actual Wages.** - The actual wages paid shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes.

**9-1.03A (1b) Labor Surcharge.** - To the actual wages, as defined in Section 9-1.03A(1a), will be added a labor surcharge set forth in the State of California, Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the contract. Said labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workers, other than actual wages as defined in Section 9-1.03A (1a) and subsistence and travel allowance as specified in Section 9-1.03A (1c).

**9-1.03A (1c) Subsistence and Travel Allowance.** - The actual subsistence and travel allowance paid to such workers.

## SECTION 9

## MEASUREMENT AND PAYMENT

**9-1.03A (2) Materials.** - The City reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no claims for costs and markup on such materials.

Only materials furnished by the Contractor and necessarily used in the performance of the work will be paid for. The cost of such materials will be the cost to the purchaser, whether Contractor, subcontractor or other forces, from the supplier thereof, except as the following are applicable:

**9-1.03A(2a)** - If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to the City notwithstanding the fact that such discount may not have been taken.

**9-1.03A (2b)** - If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to such purchaser, the cost of such materials shall be deemed to be the price paid to the actual supplier as determined by the Engineer plus the actual costs, if any, incurred in the handling of such materials.

**9-1.03A (2c)** - If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of such materials shall not exceed the price paid by the purchaser for similar materials furnished from said source on contract items or the current wholesale price for such materials delivered to the job site, whichever price is lower.

**9-1.03A (2d)** - If the cost of such materials is, in the opinion of the Engineer, excessive, then the cost of such material shall be deemed to be the lowest current wholesale price at which such materials were available in the quantities concerned delivered to the job site, less any discounts as provided in Section 9-1.03A(2a).

**9-1.03A (2e)** - If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof within 60 days after the date of delivery of the material or within 15 days after acceptance of the contract, whichever occurs first, the City reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials were available in the quantities concerned delivered to the location of the work, less any discounts as provided in Section 9-1.03A (2a).

**9-1.03A(3) Equipment Rental.** - The Contractor will be paid for the use of equipment at the rental rates listed for such equipment in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the contract, regardless of ownership and rental or other agreement, if such may exist, for use of such equipment entered into by the Contractor, except that for those pieces of equipment with a rental rate of \$10.00 per hour or less as listed in the Labor Surcharge And Equipment Rental Rates publication and which are rented from a local equipment agency, other than Contractor owned, the Contractor will be paid at the hourly rate shown on the rental agency invoice or agreement for the time used on force account work as provided in Section 9-1.03A (3a), "Equipment on the Work." If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged will be paid to the Contractor.

If it is deemed necessary by the Engineer to use equipment not listed in said publication, a suitable rental rate for such equipment will be established by the Engineer. The Contractor may furnish any cost data which might assist the Engineer in the establishment of such rental rate. If the rental rate established by the Engineer is \$10.00 per hour or less, the provisions above concerning rental of equipment from a local equipment agency shall apply.

The rental rates paid as above provided shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Operators of rented equipment will be paid for as provided in Section 9-1.03A(1), "Labor."

All equipment shall, in the opinion of the Engineer, be in good working condition and suitable for the purpose for which the equipment is to be used.

Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum ratings recommended by the manufacturer.

Individual pieces of equipment or tools not listed in said publication and having a replacement value of \$500 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor.

Rental time will not be allowed while equipment is inoperative due to breakdowns.

**9-1.03A (3a) Equipment on the Work.** - The rental time to be paid for equipment on the work shall be the time the equipment is in operation on the extra work being performed, and in addition, shall include the time required to move the equipment to the location of the extra work and return it to the original location or to another location requiring no more time than that required to return it to its original location, except that moving time will not be paid for if the equipment is used at the site of the extra work on other than such extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made if the equipment is used at the site of the extra work on other than such extra work.

The following shall be used in computing the rental time of equipment on the work:

- (1) When hourly rates are listed, less than 30 minutes of operation shall be considered to be 1/2 hour of operation.
- (2) When daily rates are listed, less than 4 hours of operation shall be considered to be 1/2 day of operation.

**9-1.03A (3b) Equipment not on the Work.** - For the use of equipment moved in on the work and used exclusively for extra work paid for on a force account basis, the Contractor will be paid the rental rates listed in the State of California Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the work is accomplished and which is a part of the contract, or determined as provided in Section 9-1.03A (3) and for the cost of transporting the equipment to the location

## SECTION 9

## MEASUREMENT AND PAYMENT

of the work and its return to its original location, all in accordance with the following provisions:

- (1) The original location of the equipment to be hauled to the location of the work shall be agreed to by the Engineer in advance.
- (2) The City will pay the costs of loading and unloading such equipment.
- (3) The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.
- (4) The cost of transporting equipment shall not exceed the applicable minimum established rates of the Public Utilities Commission.
- (5) The rental period shall begin at the time the equipment is unloaded at the site of the extra work, shall include each day that the equipment is at the site of the extra work, excluding Saturdays, Sundays, and legal holidays unless the equipment is used to perform the extra work on such days, and shall terminate at the end of the day on which the Engineer directs the Contractor to discontinue the use of such equipment. The rental time to be paid per day will be in accordance with the following:

*Hours Equipment  
is in Operation*

*Hours to be paid*

0	4
0.5	4.25
1	4.5
1.5	4.75
2	5
2.5	5.25
3	5.5
3.5	5.75
4	6
4.5	6.25
5	6.5
5.5	6.75
6	7
6.5	7.25
7	7.5
7.5	7.75
8	8
Over 8	hours in operation

The hours to be paid for equipment which is operated less than 8 hours due to breakdowns, shall not exceed 8 less the number of hours the equipment is inoperative due to breakdowns.

When hourly rates are listed, less than 30 minutes of operation shall be considered to be 1/2 hour of operation.

When daily rates are listed, payment for 1/2 day will be made if the equipment is not used. If the equipment is used, payment will be made for one day. The minimum rental time to be paid for the entire rental period on an hourly basis shall not be less than 8 hours or, if on a daily basis, shall not be less than one day.

- (6) Should the Contractor desire the return of the equipment to a location other than its original location, the City will pay the cost of transportation in accordance with the above provisions, provided such payment shall not exceed the cost of moving the equipment to the work.
- (7) Payment for transporting, and loading and unloading equipment, as above provided, will not be made if the equipment is used on the work in any other way than upon extra work paid for on a force account basis.

When extra work, other than work specifically designated as extra work in the plans and specifications, is to be paid for on a force account basis and the Engineer determines that such extra work requires the Contractor to move on to the work equipment which could not reasonably have been expected to be needed in the performance of the contract, the Engineer may authorize payment for the use of such equipment at equipment rental rates in excess of those listed as applicable for the use of such equipment subject to the following additional conditions:

- (1) The Engineer shall specifically approve the necessity for the use of particular equipment on such work,
- (2) The Contractor shall establish to the satisfaction of the Engineer that such equipment cannot be obtained from a normal equipment source or sources and those of the subcontractors,
- (3) The Contractor shall establish to the satisfaction of the Engineer that the proposed equipment rental rate for such equipment from the proposed source is reasonable and appropriate for the expected period of use.
- (4) The Engineer shall approve the equipment source and the equipment rental rate to be paid by the City before the Contractor begins work involving the use of said equipment.

**9-1.03A(3c) Owner-Operated Equipment.** - When owner-operated equipment is used to perform extra work to be paid for on a force account basis, the Contractor will be paid for the equipment and operator, as follows:

Payment for the equipment will be made in accordance with the provisions in Section 9-1.03A(3), "Equipment Rental."

Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar

equipment already on the project or, in the absence of such other workers, at the rates for such labor established by collective bargaining agreements for the type of worker and location of the work, whether or not the owner operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein, in accordance with the provisions in Section 9-1.03A(1b), "Labor Surcharge."

To the direct cost of equipment rental and labor, computed as provided herein, will be added the markups for equipment rental and labor as provided in Section 9-1.03A, "Work Performed by Contractor."

**9-1.03B Work Performed by Special Forces or Other Special Services.**

-When the Engineer and the Contractor, by agreement, determine that a special service or an item of extra work cannot be performed by the forces of the Contractor or those of any of the subcontractors, such service or extra work item may be performed by a specialist. Invoices for such service or item of extra work on the basis of the current market price thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with the established practice of the special service industry to provide such complete itemization.

In those instances wherein a Contractor is required to perform extra work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the job site, the charges for that portion of the extra work performed in such facility may, by agreement, be accepted as a specialist billing.

To the specialist invoice price, less a credit to the City for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added 15 percent in lieu of the percentages provided in Section 9-1.03A, "Work Performed by Contractor."

**9-1.03C Records.** - The Contractor shall maintain all records in such a manner as to provide a clear distinction between the direct costs of extra work paid for on a force account basis and the costs of other operations.

From the above records, the Contractor shall furnish the Engineer completed daily extra work reports, on forms furnished by the City, for each day's extra work to be paid for on a force account basis. The daily extra work reports shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor, or other forces, except for charges described in Section 9-1.03B, "Work Performed by Special Forces or Other Special Services." The daily extra work reports shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment, and hours operated.

Material charges shall be substantiated by valid copies of vendor's invoices. Such invoices shall be submitted with the daily extra work reports, or if not available, they shall be submitted with subsequent daily extra work reports. Should said vendor's invoices not be submitted within 60 days after the date of delivery of the material or within 15 days after the acceptance of the contract, whichever occurs first, the City reserves the right to establish the cost of such materials at the lowest current wholesale prices at which said materials were available in the quantities concerned delivered to the location of work less any discounts as provided in Section 9-1.03A (2a).

Said daily extra work reports shall be signed by the Contractor or the Contractor's authorized representative.

The Engineer will compare his/her records with the completed daily extra work reports furnished by the Contractor and make any necessary adjustments. When these daily extra work reports are agreed upon and signed by both parties, said reports shall become the basis of payment for the work performed, but shall not preclude subsequent adjustment based on a later audit by the City.

The Contractor's cost records pertaining to work paid for on a force account basis shall be open to inspection or audit by representatives of the City, during the life of the contract and for a period of not less than 3 years after the date of acceptance thereof, and the Contractor shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to forces other than the Contractor, the Contractor shall make every reasonable effort to insure that the cost records of such other forces will be open to inspection and audit by representatives of the City on the same terms and conditions as the cost records of the Contractor. If an audit is to be commenced more than 60 days after the acceptance date of the contract, the Contractor will be given a 10 day notice of the time when such audit is to begin.

**9-1.03D Payment.** - Payment as provided in Sections 9-1.03A, "Work Performed by Contractor," and 9-1.03B, "Work Performed by Special Forces or Other Special Services," shall constitute full compensation to the Contractor for performance of work paid for on a force account basis and no additional compensation will be allowed therefor.

**9-1.04 Notice of Potential Claim.** - The Contractor shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the Engineer, including failure or refusal to issue a change order, or for the happening of any event, thing, occurrence, or other cause, unless the Contractor shall have given the Engineer due written notice of potential claim as hereinafter specified, provided, however, the written request by this Section 9-1.04 shall not be a prerequisite to claims subject to the protest provisions set forth in Section 4-1.03, "Changes," or Section 8-1.06, "Time of Completion," or the notice provisions in Section 8-1.07, "Liquidated Damages," or Section 8-1.10, "Utility and Non-Highway Facilities," nor to any claim which is based on differences in measurements or errors of computation as to contract quantities.

The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The notice as above required must have been given to the Engineer prior to the time that the Contractor shall have performed the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Engineer, or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. City may request additional information from Contractor regarding the Contractor's claim which shall be provided to City within 10 days of the request.

It is the intention of this Section 9-1.04 that differences between the parties arising under and by virtue of the contract be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that they shall have no right to additional compensation for any claim that may be



## SECTION 9

## MEASUREMENT AND PAYMENT

based on any such act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed.

**9-1.05 Stop Notices.** - The City may at its option and at any time retain out of any amounts due the Contractor, sums sufficient to cover claims filed pursuant to Section 3179 et seq of the Civil Code. Stop notice information may be obtained from the Department of Public Works of the City of San Jose.

**9-1.06 Partial Payments.** - The City, once in each month, shall cause an estimate in writing to be made by the Engineer. The estimate shall include the total amount of work done to the time of such estimate, and the value thereof. The estimate shall also include any amounts payable for mobilization.

The City shall retain 10 percent of such estimated value of the work done, except that at any time after 50 percent of the work has been completed, if the Engineer finds that satisfactory progress is being made, the City may reduce the total amount being retained from payment pursuant to the above requirements to 5 percent of the total estimated value of said work and may so reduce the amount retained from any of the remaining partial payments to 5 percent of the estimated value of such work. In addition, on any partial payment made after 95 percent of the work has been completed, the City may reduce the amount withheld from payment pursuant to the requirements of this Section 9-1.06, to such lesser amount as the Engineer determines is adequate security for the fulfillment of the balance of the work and other requirements of the contract (but in no event will said amount be reduced to less than 125 percent of the estimated value of the work yet to be completed as determined by the Engineer). Such reduction will only be made upon the written request of the Contractor and shall be approved in writing by the surety on the Performance Bond and by the surety on the Payment Bond. The approval of the surety shall be submitted to the City; the signature of the person executing the approval for the surety shall be properly acknowledged and the power of attorney authorizing him/her to give such consent must either accompany the document or be on file with the City.

The Engineer may at any time and in the Engineer's sole discretion reinstate the retention at the full 10 percent of the value of the work performed upon notice to the Contractor. The Contractor shall immediately repay to the City all amounts paid to the Contractor in excess of the 10 percent retention. If the Contractor fails to repay the amount due within a reasonable time, the City may, in addition to all of the other remedies available to it, withhold such amount from future partial payments made to the Contractor.

The City shall pay monthly to the Contractor, while carrying on the work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the contract. No such estimate or payment shall be required to be made when, in the judgment of the Engineer, the work is not proceeding in accordance with the provisions of the contract, or the total value of the work done since the last estimate amounts to less than \$5,000.

No such estimate or payment shall be construed to be an acceptance of any defective work or improper materials.

Attention is directed to the express prohibition against payment to unlicensed contractors contained in Public Contract Code Section 10164, the provisions of which are set forth in Section 7-1.01C, "Contractor's Licensing Laws."

The estimates of the Engineer shall be final and conclusive evidence of the amount of work performed by the Contractor under this contract, and shall be taken as full measure of compensation to be received by the Contractor.

Before any partial payment or the final payment is made, the Contractor may be required to submit satisfactory evidence that the Contractor is not delinquent in payments to employees or creditors for labor and materials incorporated into the work.

The Contractor shall maintain and provide to the City, with each partial payment request, certified payrolls for all of its employees and those employees of Contractor's subcontractors.

**9-1.065 Payment of Withheld Funds.** - The Contractor may substitute securities for any moneys withheld by the City to ensure performance under this contract, provided that substitution of securities shall not be allowed in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal statutes, regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank as the escrow agent, the City shall then pay such withheld moneys to the Contractor. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor.

Securities eligible for investment under this Section shall include those listed in Section 16430 of the California Government Code, bank or savings and loans certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the City.

The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

The escrow agreement used to implement this Section shall be null, void, and unenforceable unless it is substantially similar to the following form:

### ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between City of San Jose whose address is \_\_\_\_\_, hereinafter called "Owner,"

\_\_\_\_\_ whose address is \_\_\_\_\_  
 \_\_\_\_\_ hereinafter called "Contractor"  
 and  
 \_\_\_\_\_ whose address is \_\_\_\_\_  
 \_\_\_\_\_ hereinafter called "Escrow Agent"

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

- (1) Pursuant to Section 22200 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of the contractor, the owner shall make payments of the retention earnings directly to the escrow agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of \_\_\_\_\_, and shall designate the Contractor as the beneficial owner.
- (2) The Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
- (3) When the Owner makes payment of retentions earned directly to the escrow agent, the escrow agent shall hold them for the benefit of the contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All Terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the owner pays the escrow agent directly.

- (4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor and Escrow Agent.
- (5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.
- (6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account accompanied by written authorization from Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.
- (7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.
- (8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.
- (9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (4) and (6), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest set forth above.
- (10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

**SECTION 9**

**MEASUREMENT AND PAYMENT**

On behalf of Owner

On behalf of Contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

On behalf of Escrow Agent

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner

Contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

**9-1.07 Payment After Acceptance.** - After the work has been accepted by the Engineer, as provided in Section 7-1.17, "Acceptance of Contract," payments will be made to the Contractor subject to the provisions in this Section 9-1.07.

**9-1.07A Payment Prior to Proposed Final Estimate.** - After acceptance of the work by the Engineer, the Engineer will make an estimate of the total amount of work done under the contract and the City will make a final monthly payment pending issuance of the proposed final estimate. The City will pay the balance thereon found to be due after deduction of all previous payments, all amounts to be kept or retained under the provisions of the contract, and such further amounts as the Engineer determines to be necessary pending issuance of said proposed final estimate and payment thereon.

**9-1.07B Final Payment and Claims.** - If the work is deemed acceptable to the Engineer in the Engineer's sole discretion, after acceptance by the Engineer, the Engineer will make a proposed final estimate in writing of the total amount payable to the Contractor, including therein an itemization of said amount, segregated as to contract item quantities, extra work and any other basis for payment, and shall also show therein all deductions made or to be made for prior payments and amounts to be kept or retained under the provisions of the contract. All prior estimates and payments shall be subject to correction in the proposed final estimate. Within 30 days after said proposed final estimate has been submitted to the Contractor, the Contractor shall submit to the Engineer written approval of said proposed final estimate or a written statement of all claims the Contractor has arising under or by virtue of the contract. No claim will be considered that was not included in said written statement of claims, nor will any claim be allowed as to which a notice or protest is required under the provisions in Sections 4-1.03, "Changes," 8-1.06, "Time of Completion," 8-1.07, "Liquidated Damages," 8-1.10, "Utility and Non-Highway Facilities," and 9-1.04, "Notice of Potential Claim," unless the Contractor has complied with the notice or protest requirements in said sections.

On the Contractor's approval, or if the Contractor files no claim within said period of 30 days, the Engineer will issue a final estimate in writing in accordance with the proposed final estimate submitted to the Contractor and within 30 days thereafter the City will pay the entire sum so found to be due. Such final estimate and payment thereon shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except as otherwise provided in Section 9-1.03C, "Records."

If the Contractor within said period of 30 days files claims, the Engineer will issue a semifinal estimate in accordance with the Proposed final estimate submitted to the Contractor and within 30 days thereafter the City will pay the sum so found to be due. Such semifinal estimate and payment thereon shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except insofar as affected by the claims filed within the time and in the manner required hereunder and except as otherwise provided in Section 9-1.03C, "Records."

The claims filed by the Contractor shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of said claims. The Engineer will consider and determine the Contractor's claims and it will be the responsibility of the Contractor to furnish within a reasonable time such further information and

## **SECTION 9**

## **MEASUREMENT AND PAYMENT**

details as may be required by the Engineer to determine the facts or contentions involved in the Contractor's claims. Failure to submit such information and details will be sufficient cause for denying the claims and shall constitute a waiver of such claims.

The Engineer will make the final determination of any claims which remain in dispute after completion of claim review. The Engineer will review such claims and make a written recommendation thereon. The Contractor may meet with the review board or person to make a presentation in support of such claims.

Upon final determination of the claims, the Engineer shall then make and issue the Engineer's final estimate in writing and within 30 days thereafter the City will pay the entire sum, if any, found due thereon. Such final estimate shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except as otherwise provided in Section 9-1.03C, "Records."

Before the final payment can be made, the Contractor shall also submit to the Engineer all record drawings, catalog data, warranties and guarantees, operation and maintenance instruction sheets, and other items as required by the contract documents.

**9-1.08 (Blank)**

**9-1.09 (Blank)**

**9-1.10 No Arbitration of Disputes.** - All disputes shall be resolved by litigation as provided for herein.

**END OF SECTION**